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ABSTRACT

The National Center for Educational Communication (USOE) initiated with the Institute for Educational Development the concept of a conference which would bring the USOE-sponsored Research and Development Centers and Regional Educational Laboratories together with publishers and manufacturers who might assist them in developing their products and in moving them into widespread use in schools. Another objective was to generate specific policy recommendations for the U.S. Office of Education. The government's interest in makeing USOE-sponsored products readily available to schools and also the effect the new USOE copyright policies might have on the development and the dissemination of those products was presented by government officials. As background material for these presentations, copies of old and new USOE Copyright Guidelines were distributed. The materials distributed at the Conference and all papers presented by the participants on the first day are included in this report. On the second day small task groups formulated recommendations they would make to USOE as a total group of conferees. The recommendations are included in this report and are addressed to the following audiences: (1) Government-sponsored agencies and individual projects which develop new forms of educational practices; (2) Publishers and manufacturers of educational materials, and (3) The United States Office of Education. (ON)

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Conference Report

DISSEMINATION OF EDUCATIONAL PRODUCTS DEVELOPED UNDER USOE SPONSORSHIP

Institute for Educational Development
52 Vanderbilt Avenue
New York, New York 10017

Greyston Conference Center
Riverdale, New York
April 23-24, 1970

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THE INSTITUTE FOR EDUCATIONAL DEVELOPMENT

A Brief Description

IED is committed to a search for rational, cooperative and creative changes in education, especially in cities and situations affecting minorities and the poor. The Institute was created at a time in history when a critical re-examination of our educational institutions was occurring, a process accompanied by a general spirit of dissatisfaction in our society at large and in the profession of education itself. Just at that time a greatly increased federal engagement in elementary and secondary education was taking place. Simultaneously, a new and enlarged interest on the part of industry began to be expressed, for reasons of social responsibility as well as self-interest.

In that context IED was conceived as a new instrument for "closing the circle between education, industry and government". The work of IED in the past few years has focused increasingly upon research and development in four general categories:

- Assessing and improving inner-city education
- Advancing educational technology
- Facilitating relationships between the business community and the schools
- Increasing the effectiveness of school organization and administrators

The management of this conference is illustrative of IED's interest in facilitating relationships between industry, education, and government.

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INTRODUCTION

During the past decade, the United States Office of Education has sponsored the development of important new forms of educational practice along with supporting materials and equipment. The rate at which new practices and materials have been produced under USOE sponsorship accelerated sharply with the passage of the Elementary and Secondary Education Act of 1965. Since the adoption of that act, the bulk of USOE funds for product development has gone to eight university-based educational Research and Development Centers and to 15 Regional Educational Laboratories.

These 23 USOE-sponsored Centers and Labs have now matured to the point that many have or soon will have market-ready materials. However, there is at present no clear route to the schools for many of these products; thus problems may arise in getting them into wide use. Publishing and manufacturing companies have developed substantial experience in marketing educational products and presumably could assist Centers and Labs in making their new methods and materials generally available to the schools. However, the government-sponsored development agencies often do not know the publishers and the latter often do not know the development agencies. When they do get together, as has happened in a few cases, it is usually when the Center or Lab is in the final stages of product development, whereas an earlier relationship might have meant a higher-quality, more marketable product.

Lee Burchinal, Assistant Commissioner, National Center for Educational Communication, initiated with IED the concept of a conference which could bring Centers and Labs together with publishers and manufacturers. The NCEC, a recently created unit of USOE, is responsible for the spread of educational products and practice. It operates the Educational Resources Information Center (ERIC), a nationwide network of 20 Clearinghouses which collect and disseminate information about educational research and resources. Among its other duties, NCEC administers the USOE Copyright Program. Its interests and those of IED blended naturally in the idea of a Conference.

The Conference was scheduled in New York for April 23-24, 1970. The heads of selected Centers and Labs were invited to represent the entire set of 23 such organizations. The American Educational Publishers Institute gave substantial aid in arranging representation from the publishing industry.

The men who attended the Conference speak for some of the most significant development and publishing organizations on the American educational scene. Moreover, they were joined in their recommendations by several of the nation's best qualified copyright attorneys as well as by other knowledgeable observers of the schools and publishing enterprises. Government representatives at the Conference assured the participants that the advice and recommendations evolving from the meeting would be carefully studied and considered for incorporation into USOE policy.

NATURE OF THE CONFERENCE

The primary objective of the Conference was to generate ideas for improving the relationship between Centers and Labs and the publishers and manufacturers who might assist them in developing their products and moving them into widespread use in the schools. A related objective was to generate policy recommendations for USOE. Throughout the Conference discussions, it became evident that both the government-sponsored organizations and the publishers and manufacturers were closely attuned to the needs of the schools and were speaking on their behalf as well as on behalf of the general public interest in seeing goverment-supported products made widely available.

The meeting was held just as USOE announced a change in its public domain and copyright policy under new Guidelines effective June 8, 1970, replacing the previous Guidelines dated June 24, 1968. While the Conference participants indicated pronounced respect for the administration of the previous copyright policy, they expressed considerable interest in the changes scheduled to go into effect in June, 1970. They talked in detail about how those changes would increase the assistance which publishers and manufacturers could give to government-sponsored organizations in disseminating their products. Participants also examined and offered advice on NCEC's current plans for informing the materials industry about what is now being produced under USOE sponsorship.

Several of the participants had been asked in advance to introduce specific topics during the first day of the Conference. Lee Burchinal and Morton Bachrach of USOE commented on the government's interest in making USOE-sponsored products readily available to the schools and on the effect the new USOE copyright policies might have on the development and distribution of those products. As background materials for these presentations, copies of both old and new USOE Copyright Guidelines and an information pamphlet concerning the new guidelines were distributed in advance.

Also included in the advance materials was a thoughtful paper by Julius J. Marke, New York University Law Professor and Law Librarian. Based on information Professor Marke gathered last year during a survey of the subject with the support of the Ford Foundation, the paper served as a backdrop for his presentation concerning the government's public domain policies. He recommended an approach to copyright policy which would remain adaptable to coming changes in the government's information-retrieval objectives and would foster competition, cooperation and creativity in educational research and development.

Melvin W. Barnes of Scholastic Magazines, Inc. spoke as a former school administrator who now occupies a position inside the educational materials industry. He expressed the desire of publishers to be considered and consulted early in the development process and described what Centers and Labs could gain by arranging such early involvement.

Fred S. Rosenau responded to the new USOE policies from his point of view as Director of General Dissemination of the Far West Laboratory for Educational Research and Development. He outlined the problems the laboratories face in deciding when to release products for distribution, what channels to use, and what point in product development to begin working with publishers, and related matters.

The materials distributed at the Conference and the papers presented on the first day are included in this report.

On the second day of the Conference, developers, publishers and attorneys were assigned at random to small Task Groups so as to assure full discussion as well as a thorough examination of all viewpoints. Government officials sat with the groups to supply information and to hear the deliberations. Each Task Group was asked to consider the following topics:

1. Copyright Term, Extension, and Public Domain Date
2. Division of Royalties Between Centers or Labs and U.S. Treasury
3. Alerting Publishers to Center and Lab Products
4. Participation by Publishers in the Development Process
5. Control Over Substantive Content and Physical Format
6. Publication of Materials in Multi-Media Format
7. Publishers as Suppliers of In-Service Training and Other Installation Services
8. Revision of Products After Publication
9. Distribution of Thin-Market Products
10. USOE/NCEC Endorsement of Specific Products
11. USOE Coordination of Government Research, Development, Dissemination and Training in Education
12. Continuing Communication Among Centers and Labs, Publishers and USOE/NCEC

A lively and professional atmosphere prevailed in the groups, where much of the real work of the Conference took place and where ideas were generated and tested.

The Task Groups were then called together to report their recommendations, identify and discuss differences in viewpoints, and formulate recommendations they would make as a total group of conferees. Unanimity was sometimes achieved. While it was not achieved on every issue, and indeed could not have been expected, the majority of participants were able to agree upon a set of recommendations. Those recommendations are presented in the following section of this report.

The recommendations arrived at by the Conference participants are addressed to the following audiences: (1) Government-sponsored agencies and individual projects which develop new forms of educational practice, (2) publishers and manufacturers of educational materials, and (3) the United States Office of Education.

RECOMMENDATIONS

Since the participants had been assembled at the invitation of USOE to speak to the best interest of the Government, their time was allocated largely to assigned topics, all of which related to the dissemination of educational products developed under USOE sponsorship. They were asked to arrive at specific recommendations for Government policy. There turned out to be a rather close convergence of ideas among the three task Groups on several key issues. Some of the differences which existed on other issues were eliminated after a brief airing of views. The disagreements or shifts in emphasis that remained are recorded below along with the Conference recommendations.

Significantly, there were no splits which placed Centers and Labs on one side of an issue and publishers on the other. Each party showed insights into the problems of the other and revealed a respect for the strengths of the other. Moreover, they indicated a belief that relationships could be developed in which each could contribute as a capable partner.

The conferees' recommendations to USOE and to other interested agencies and organizations have been summarized and are presented below. These recommendations ought to be read in conjunction with the USOE/NCEC documents which appear later in this report. The reader should remember that the conferees were thoroughly familiar with these background materials and used them in discussions and in formulating the following recommendations.

1. COPYRIGHT TERM, EXTENSION, AND PUBLIC DOMAIN DATE

The June 8, 1970 USOE/NCEC Copyright Guidelines, unlike the June 24, 1968 Guidelines, de-emphasize the public domain policy. For example, the new guidelines no longer require developers to file proof that they tried but failed to arrange commercial dissemination without copyright before being allowed to seek copyright. Those in attendance endorsed the policy change as highly sensible and predicted it would accelerate the spread of Center and Lab products.

Without exception, the conferees urged a flexible approach to the application of the new Copyright Guidelines with a heavy emphasis on two objectives: 1) rapid and effective dissemination of Lab and Center work, and 2) preservation of the integrity of their products.

RECOMMENDATION 1: The original term of a copyright should be of fairly extended duration, that is, five years or more. The Government should stand ready to negotiate an extension of the original copyright term.

The length of copyright term for a specific product should be decided by the nature of that product and by its marketing requirements. In most cases an original term of five to ten years would be appropriate. Given such an initial term, an extension will not be necessary for many products, whose publishers will continue to distribute them without additional protection.

A minority of those who attended the Conference felt that the Government's interests would be best served by leaving even the initial copyright term flexible and negotiable rather than fixing its length by policy; they saw a fixed term as unnecessary and as possibly undesirable when applied to certain products.

Lee Burchinal said that it seems reasonable for the Government to allow a relatively longer term when the publisher himself makes a major investment in the product.

RECOMMENDATION 2: A date for placing the copyrighted material in the public domain should not be set when the original copyright is granted but should be established only after a few years of experience in distributing the product demonstrates whether the public interest will be best served by a copyright extension or by declaring the product to be in the public domain.

The conferees acknowledged that the Government-sponsored products would eventually be placed in the public domain, but insisted that the Government will gain advantages in distributing Center and Lab products if it tailors its public domain decision to the particular case rather than blanketing all materials under a uniform rule.

A few of those at the Conference felt that the date for expiration of the copyright and placing materials in the public domain should be negotiated and firmly settled at the time of original copyright. (USOE/NCEC now requires that a special legend must appear adjacent to the copyright notice on published materials, showing the expiration date of the authorized copyright.)

RECOMMENDATION 3: Copyright protection should be granted for successive versions of the product which appear in new media, some of which may not have been envisioned when the original material was copyrighted.

The conferees felt that the same content might need to reappear later in alternative media, given rapid changes in the field. For example, if video tape recorders come into widespread use in the schools during the next five years, developers and publishers may wish to convert currently-copyrighted print materials into video tape. The video tapes would then deserve copyright protection similar to what the print materials have been granted.

RECOMMENDATION 4: The Center or Lab which develops a product should hold the copyright for it and should grant the equivalent of a license to a publisher to distribute that product, with the duration of the license a matter of negotiation between the developer and the publisher.

This is standard practice in the industry, acceptable to publishers and in the best interest of Labs and Centers. The license to distribute the product presumably would be renewed so long as the publisher is distributing the product effectively.

RECOMMENDATION 5: In the event that a licensed publisher goes out of business, the license should be restored to the Center or Lab which issued it. In the event that a Center or Lab holding a copyright is dissolved, the copyright should be restored to USOE.

Such arrangements are standard provisions of publication contracts and have well-established precedents.

RECOMMENDATION 6: USOE/NCEC should sponsor a survey, perhaps with the cooperation of AEPI, to determine how many Goverment sponsored products have been published under the previous public domain policy.

The conferees felt that evidence justifying the policy change embodied in the June, 1970 Copyright Guidelines would be useful to the Government. Moreover, information about what was published under the previous policy would be valuable base-line data for judging the effect of the change. The conferees predicted the survey would show that USOE was not able to achieve wide-scale dissemination of products under the previous policy because very few publishers would market materials under that arrangement.

2. DIVISION OF ROYALTIES BETWEEN CENTERS OR LABS AND U.S. TREASURY

Under previous guidelines, a USOE-supported development agency such as a Center or Lab was prohibited from retaining a share of any royalties paid by the publisher or manufacturer of a product. Any such royalties were to be paid to the U.S. Treasury in their entirety. That situation was altered with the issuance of the new June 8, 1970 Guidelines, which provide that any USOE-sponsored nonprofit organization, such as a Center or Lab, may retain at least 50 percent of the copyright royalties. The remainder is to be paid to the U.S. Treasury.

Those who attended the Conference debated what the most desirable split of royalties between the developer and the U.S. Treasury should be. Representatives of publishing industry as well as directors of the development agencies engaged actively in the discussion.

RECOMMENDATION 1: Royalties should be equally divided between the originating Center or Lab and the U.S. Treasury.

> After weighing the possible advantages of several alternatives, conferees reached general agreement that a 50-50 split would be best.
>
> A few of those in attendance, several publishers among them, felt that the originating Center or Lab should receive a larger share of the royalties for re-investment in their research and development programs. They felt that the Government would gain more value this way than by having funds paid to the U.S. Treasury. Yet even these few tempered their views with an appreciation of the possible danger involved: too large a share of royalties for Centers and Labs could lead them to perpetuate their relationships with particular publishers, reducing competition among companies interested in distributing other products in the future.

3. ALERTING PUBLISHERS TO CENTER AND LAB PRODUCTS

Conferees were asked what should be done to acquaint publishers with Center and Lab products. The question received considerable attention for two reasons: (1) it had already become clear at the Conference that publishers were not well informed about Center and Lab products (some publishers actually expressed surprise that Centers and Labs were seeking publication through commercial channels) and (2) it had become equally clear that publishers wanted a chance to enter the product development process long before products are completed and ready for publication. The second factor creates a special problem: while it might be relatively easy for a developer to submit a fully-completed product to a series of publishers, soliciting their interest in distributing it, this cannot readily be done for incomplete products still in a formative stage and would be even more difficult for product ideas which are only in a conceptual stage.

Lee Burchinal reminded the group that USOE-sponsored developers must issue RFP's in an effort to stimulate competition before selecting a publisher, unless USOE waives the requirement when only a single publisher has the capacity to do a job. He then asked specifically whether NCEC should perform a clearinghouse function, issue newsletters about products under way, sponsor exhibits, or otherwise perform a linking role. The developers and publishers mulled over several possibilities, including these: guided tours to acquaint companies with Centers and Labs, a day set aside by the developer to give presentations to groups of company representatives, attendance by representatives of each kind of organization at the regular meetings of the other, and so on. Then they made the following recommendations:

RECOMMENDATION 1: There should be some kind of early alert system -- probably in the form of bulletins or a newsletter -- so that all publishers can have equal access to lists of Center and Lab products currently under development or even in an early conceptual stage.

There was unanimous agreement that the present pattern of individual initiative by Centers and Labs and publishers is so uneven and unreliable that the Government's interest is not being well served. The early alerting service, proposed by Lee Burchinal as a possible NCEC service, would contain only enough information about products underway to allow publishers to decide whether to seek further information from the sponsoring Center or Lab. Conferees agreed that short descriptions would be adequate for that purpose. They also agreed that wide distribution of the information to all potential publishers and manufacturers was essential, but could not settle upon the mechanism to be used.

Some recommended that NCEC simply issue a newsletter to publishers periodically -- not more often than every quarter. On the other hand, some recommended that AEPI be asked to supply such information -- to non-members of the association as well as to member companies. NCEC might gather the information and transmit it to AEPI for general dissemination, or, alternatively, Centers and Labs could submit product profiles to AEPI directly. Those who favored AEPI as the disseminating unit said that it could at the same time inform Labs and Centers of people with whom they could talk at various publishing houses.

RECOMMENDATION 2: Publishers and manufacturers should use more individual initiative in keeping alert to what is happening at Centers and Labs, now that the products of those organizations are readily copyrightable under the new Copyright Guidelines. Similarly, Centers and Labs should actively solicit the interest of publishers and manufacturers in helping with the design, production and distribution of their products.

Some publishers expressed actual surprise that Centers and Labs were interested in distributing their materials through commercial channels. Others at the Conference took this as clear evidence that the active desire of Centers and Labs to see their products offered through commercial channels had to be better communicated to the industry. Individual initiative by all parties was seen as an essential supplement to the general alerting system recommended above.

RECOMMENDATION 3: All publishers should be reminded that the new USOE Copyright Guidelines represent a significant modification of copyright policy.

There was unanimous agreement that some publishers whose interest in USOE-sponsored products had been dampened or completely extinguished by the former public domain policy would react quite differently to the ease of copyright which the June, 1970 Copyright Guidelines made possible. Conferees felt that more than one reminder to the industry would be needed to impress this significant policy change upon all publishers and manufacturers. Publishers said that the most attractive feature of the new Copyright

Guidelines was that they were now causing Centers and Labs to seek actual partnerships with commercial organizations to design, produce, and disseminate better educational products.

RECOMMENDATION 4: NCEC should not expect an annual exhibit of products under development -- an exhibit at which Centers and Labs would display their products to potential publishers -- to be as effective as other arrangements.

Many of those in attendance felt that an NCEC-sponsored exhibit, about which Lee Burchinal was seeking advice, would be poorly attended and would not achieve its purpose. They felt this was particularly the case for products at the early stage of development during which publishers should make their decision about the materials. That is, products which can be best exhibited are those which are most complete, but it is these in which publishers can be expected to have the least interest. Conversely, products at an earlier stage of development will arouse more response in the industry but cannot be exhibited well. In short, they felt that the exhibit format was not favorable for displaying products to perspective publishers.

A minority of those at the Conference saw an annual NCEC exhibit as perhaps being a useful supplement to other information channels. They felt it would do no harm and might get a response from a few publishers who preferred to deal with completed products. They also said it would be a useful general reminder to industry that Centers and Labs are actively seeking commercial publication.

4. PARTICIPATION BY PUBLISHERS IN THE DEVELOPMENT PROCESS

Those attending the Conference were asked when and how publishers should enter the development process. Center and Lab directors listened closely for publishers' views as to when they should enter the scene and publishers listened equally closely to Center and Lab directors' ideas about when they would be willing to have publishers get involved. It was evident that each party considered the answers of the other a good predictor of whether useful partnerships were possible.

RECOMMENDATION 1: The publisher or manufacturer should be involved early in the planning and actual development of a product.

The participants agreed that there was much to be gained both for the product and ultimately for the schools by early involvement of the publisher. Early entry was seen as likely to prevent errors, limit the number of revisions, save money for both parties, and accelerate the completion and marketing of the product. Most important, both agreed that higher quality products would be likely to result. (The Copyright Guidelines encourage companies to participate in the development process, but they must be selected by the RFP process. Informal contacts between developers and companies are encouraged so long as no commitment to a company is made until Copyright Guideline procedures are followed.)

The publishers and manufacturers explained in detail that while they were proficient in distributing products, they had other significant contributions to make as well. They pointed to their knowledge of the school market -- their understanding of what schools would find attractive and practical and usable and within the school budget -- as well as their knowledge of materials already published with which Center and Lab materials would have to compete. But beyond this, they pointed with considerable pride to the substantive knowledge and editorial skills of their profes staffs and to the competance of their technical experts in materials design, graphics, and production processes.

Center and Lab directors acknowledged that they could seldom match publishers and manufacturers in those areas of expertness. On the other hand, they pointed out that Government support equipped their staffs with R & D skills which few publishing houses enjoyed and that joint efforts could enhance what the publishers could do alone. Both parties agreed that if they could have access to each other's skills beginning with the early design of materials, the result would be a better more usable product.

Publishers who had handled Government curriculum project materials testified that they were more difficult to work with and bring to market than individual authors' books, partly because of the extraordinary pride of project personnel. Publishers found that they rarely received "instant books" ready for press but sometimes crude manuscripts that needed elaborate reworking after protracted negotiations with project personnel.

Conferees recognized that early involvement might cause publishers to begin pressing the developers to get the product out quickly. They said the developer might resist that pressure in order to gain time to do the best possible job in turning out a fully-developed high quality product. But, on balance, participants felt that both parties had something to gain by product quality as well as by product completion and that the somewhat different orientations of publisher and developer were precisely what would make early involvement particularly fruitful. They agreed that the gains clearly outweighed the possible losses.

The participants also recognized that early participation by publishers might work to the disadvantage of small companies. That is, companies with small staffs and limited resources might be unable to participate early because of the costs involved and might thus be eliminated from consideration as potential distributers. But participants also noted that "small company" is a relative and sometimes misleading term since a company may be limited financially and have a small editorial staff and sales force yet have its experience concentrated in one or two market areas, which could make that company a particularly attractive partner for the development of a specific product.

RECOMMENDATION 2: Centers and Labs should use their iniative in inviting publishers to join them as soon as they feel that a publishable idea exists. Publishers and manufacturers should exercise similar initiative when they detect that a Center or Lab is working on a publishable idea.

Participants agreed that Centers and Labs should make their interest in a prospective product widely known throughout industry, even before the product has begun to take on a specific shape. The publishers and manufacturers emphasised that Centers and Labs could learn much from early conversations with a few company representatives. They could, for example, get some feeling for the ultimate marketability of the products they are considering and could then decide whether to bother preparing prospectuses and trying to arouse interest among a large group of publishers.

Center and Lab directors said they felt that publishers had sometimes been too hasty in the past to decline products when they were offered. Publishers noted that the market for school materials since 1967 has not been particularly favorable and said that they are not highly optimistic about the future, leading to care about what they will invest in. However, they agreed that they should begin taking a longer, more careful look at Center and Lab products, going beyond first impressions and collecting more than skimpy evidence. At the same time, the men from industry said that the developers should not be disappointed if there are no immediate "takers". Centers and Labs sometimes deliberately work on products more advanced than the market is currently ready to accept. If only for this reason, they may be wise to continue the development process even in the face of disinterest from publishers, going ahead on the assumption that when the product reaches a more advanced stage, market reaction to it can be better estimated. The conferees agreed that it is within the scope of Center and Lab responsibilities to attempt to arouse market interest in new kinds of products. They agreed that this could be achieved in part during the field trials which are a standard part of Center and Lab product development.

5. CONTROL OVER SUBSTANTIVE CONTENT AND PHYSICAL FORMAT

The conferees agreed that an understanding about editorial control over the content and format of a publication is necessary for a successful relationship between publisher and developer. This is particularly so if the publisher enters the process relatively early when matters of content have not been firmly settled and if the developer, because of the field relationship he has built during product design, remains in the distribution process relatively late.

RECOMMENDATION 1: Despite their differences in areas of knowledge, both developers and publishers should take responsibility for both the content and format of materials. Their relationship should be conceived of as a partnership, the conditions for which are mutual respect and an appropriate regard for the expertness of the opposite party.

Publishers made it clear at the Conference that they must have the right to reject materials which they feel cannot be successfully published. At the same time, Centers and Labs made it equally clear that they must be satisfied that their products will be brought to market in a form which retains their effectiveness as well as adding to their attractiveness. Each party readily acknowledged the rights of the other and agreed, as they had at many points during the Conference, that the conception of a partnership was appropriate.

There were some at the Conference who felt that developers should concentrate chiefly on content while publishers should give primary attention to form and style. But most participants held the counter-view that a blending of efforts is actually more desirable, with both parties exhibiting joint concern about content as well as packaging.

6. PUBLICATION OF MATERIALS IN MULTI-MEDIA FORMAT

Because most Center and Lab products require that materials be produced in several media -- print, slide, transparencies, motion pictures, audio tapes, video tapes, and so on -- the directors of these agencies sought the views of the book publishers about their readiness to produce and market multi-media packages. The publishers were unanimous and forceful in their response.

RECOMMENDATION 1: Publishers should not be thought of as "book" publishers.

The publishers made it clear that they have little or no preference as to the form in which materials are produced for schools. They explained that a publishing house owns no printing presses and no equipment for manufacturing materials in any other medium. They buy production services on the open market and are as ready to turn out material in one medium as in another, even though non-print media are more expensive. The publishers said they feel their work is to identify potential products, make significant editorial contributions, assist with their design, supply graphic arts and related services, arrange for production, and do effective marketing and distribution. These functions apply equally to all materials. In short, the publishers testified that they are ready to produce materials in any medium.

But they asked whether schools are ready to accept multi-media materials, especially integrated packages in which several kinds of materials are blended skillfully together so that the parts are interdependent. Publishers said that it is attitudes among schools -- not attitudes among the companies -- which controls the spread of multi-media materials.

RECOMMENDATION 2: If Centers and Labs want their multi-media materials to be widely used, they must help persuade schools to accept such materials as readily as they now accept books.

Printed materials are what the school market is accustomed to and can afford. School tastes and school budgets are key control points. When the content of a product requires a non-print medium, when the costs of materials in that medium can be made competitive with what schools are now purchasing, when the schools are likely to find the product attractive and effective, most publishers will have no hesitation in designing a non-print or multi-media package.

RECOMMENDATION 3: In notifying publishers and manufacturers about prospective products, Centers and Labs should indicate the media in which they expect the materials to appear.

A publisher who receives an advance description of a potential product may lose interest when he learns that the developer expects the content to be expressed in several media. The publisher may recognize that heavy use of media, while perhaps quite appropriate to the content, will limit sales severly. He may stand aside because he knows of competing products in print which are lower in cost and are, in the opinion of schools, satisfactory.

The publisher may think of the proposed package as needlessly complex and may be able to suggest modifications which will simplify the materials and lower their cost while leaving their quality undiluted. Those attending the Conference agreed that Centers and Labs would be wise to keep an open mind in hearing publishers recount their experiences in marketing non-print materials.

RECOMMENDATION 4: The USOE should consider acting as a neutral agent to discourage state adoption laws and local purchasing procedures which limit the sale of complete packages containing materials in several media.

The conferees agreed that the materials adoption process itself in some (but not all) of the 24 states which adopt textbooks is highly restrictive and impedes the sale of multi-media materials. Some state adoption procedures require that integrated packages be broken open so that their print material can be adopted separately. Large city school districts sometimes follow the same purchasing practice. Conferees agreed that fractionalizing a carefully-built multi-media kit violates its integrity and may destroy its effectiveness. They suggested that NCEC might wish to help enlighten some state officials and local school administrators about the ramifications of their practices.

RECOMMENDATION 5. USOE should assist in standardizing equipment so that materials can be designed to fit instructional machines and devices which have uniform characteristics.

While the conferees championed diversity in most matters, they said they found little advantage in instructional devices which could accept only those materials designed exclusively for that equipment. They talked about the signficant gains made in the use of instructional motion pictures when the 16 mm. size was settled upon -- admittedly arbitrarily -- by industry agreement in the 1930's. They asked whether NCEC might not find an attractive opportunity for itself or some other Government agency in helping standardize the new equipment coming into the school market.

7. PUBLISHERS AS SUPPLIERS OF IN-SERVICE TRAINING AND OTHER INSTALLATION SERVICES.

It has become commonplace for Centers and Labs to develop rather substantial relationships with school districts adopting their products. Materials are not simply "dropped in by parachute". Instead, local school leaders are acquainted with the objectives of the new program and the kind of equipment and material needed to conduct it; teachers are trained in new classroom procedures; consultants are available from Centers and Labs to monitor and advise during the installation process. Center and Lab directors at the Conference asked whether manufacturers and publishers were interested in and capable of supplying a similar array of services in distributing products to the schools. In-service training was singled out as the most elaborate and most expensive element of the installation process.

RECOMMENDATION 1: Publishers of Center and Lab products should be prepared to monitor their initial use to insure proper installation and should be prepared to supply in-service training if it is necessary to use the product as intended.

The publishers made it clear that responsible companies are as disinterested as Centers and Labs in "parachute delivery". They explained that company representatives typically enjoy a special relationship with local schools and are customarily very professional in their approach. Relationships between company representatives and local schools extend over the years; the company has everything to gain by making sure that the school understands the product thoroughly, uses it properly, and finds it successful. The publishers gave illustrations of how they typically work with schools to insure good installation. Thus they indicated that they are interested both in monitoring product use and supplying necessary training, if two conditions are met:

(1) the product itself is worth distributing to the schools and merits the installation procedures developed for it, and (2) the schools are willing to accept the in-service training and related services and can afford to pay for them. Publishers pointed out that elaborate installation and extended training requirements could sharply limit the market for a product.

RECOMMENDATION 2: Centers and Labs should draw on publishers' and manufacturers' experiences in engineering products so that schools can afford to install them.

The publishers said that while Centers and Labs might develop and successfully use fairly elaborate installation and training procedures when working with schools in their own regions during field testing, it might be difficult -- and unnecessary -- to duplicate these procedures (and their attendant costs to the schools) during a nationwide marketing effort. They said they had learned valuable lessons about how to make an installation simple enough for teachers to accept and economical enough for schools to afford.

8. REVISION OF PRODUCTS AFTER PUBLICATION

Once published or manufactured, products gradually become obsolete as time passes and need revision. Initiative for revision may come either from the original developer, whose continuing research and development has led him to an idea for a revised product, or from the publisher or manufacturer whose experience with distributing the product and whose knowledge of current market conditions may lead him to call for a revision. Unlike curriculum projects, Labs and Centers continue in operation and can be expected to want to revise their own projects. In fact, some have rapid revision cycles, providing for changes as often as once a year. Conferees discussed the degree of responsibility each party should have for scheduling and carrying out revisions and considered the role which USOE should play in this process.

RECOMMENDATION 1: The Center or Lab should retain control of product revision during the copyright period. Revision arrangements should be a matter of negotiation between the Center or Lab and the individual publisher or manufacturer; the USOE should remain apart from such negotiations.

While recognizing that the publisher or manufacturer would have an interest in revision arrangements and might want to negotiate a revision schedule at the time the developer selected the company, conferees felt it appropriate that the holder of the copyright retain actual control over modification of the product while the copyright is still in force. Both the developers and the publishers agreed that USOE had nothing to gain by participating in negotiations concerning revision of materials and that a Government policy or Government participation in the process would not be desirable.

9. DISTRIBUTION OF "THIN-MARKET" PRODUCTS

The June, 1970 Guidelines differ from the March, 1968 Guidelines in that it is no longer necessary that a formal "Request for Proposals" be issued to a large segment of the dissemination industry for thin-market materials -- those which are not directed at a mass market. The previous Guidelines did not distinguish between mass market and thin-market materials.

Conferees were asked whether commercial publishers and manufacturers were actually interested in thin-market materials. What size market is considered "thin"? Under what conditions, if any, will a mass publisher enter a thin market? Should Centers and Labs consider forming some kind of nonprofit cooperative publishing outfit to handle materials which lack commercial appeal?

> RECOMMENDATION 1: The commercial publishing and manufacturing industry should be expected to handle a certain number of thin-market products.
>
> > Representatives of the industry pointed out that educational publishers who are involved in major projects which are profitable may want to publish thin-market materials which reinforce or supplement those major products. Although such supplementary materials may not be directly profitable, they often help create a favorable climate for acceptance of the major product of which they are a part.
> >
> > A sales volume of even 10,000 copies of an item would classify the product as mass market unless sales were extremely slow. Center and Lab products for pupils presumably will meet that minimum level in many cases. Even the arrival of the multi-textbooks, multi-media classroom will not drop sales of most materials to a thin-market level.
> >
> > To the extent that Centers and Labs are interested in marketing the results of development rather than scholarly papers, the market should not be thin. The efforts of Centers and Labs to acquaint schools with their products would tend to move them out of the thin-market category. If, through their field work with schools, they can assure publishers of some minimum base of sales for a given set of materials, the thin-market problem for those materials will dissolve.
>
> RECOMMENDATION 2: Centers and Labs should not attempt to create a new nonprofit agency to promulgate thin-market materials.
>
> > The idea for a new nonprofit publishing house sponsored by Centers and Labs arose from the assumption that their products might not flow adequately through existing channels. Most of those in attendance felt that university presses, Government printing offices, journals of professional organizations, and other limited-circulation publications already provide sufficient outlets for thin-market products. The existance of a number of commercial specialty publishers who make a business of handling thin-market materials was pointed out. Centers and Labs may be able to arrange with

such a speciality house to bring out a series of publications which would have limited but sufficient appeal to make them marketable.

Numerous participants looked negatively at the proliferation of nonprofit and hence nontaxpaying organizations to promulgate thin-market materials. They said that Centers and Labs should not find it necessary to create a new agency and that to do so would preoccupy them with marketing at the expense of creative product development. Conferees agreed that it was definitely in the interest of the industry itself to distribute thin-market products rather than have nonprofit alternatives spring up.

10. USOE/NCEC ENDORSEMENT OF SPECIFIC PRODUCTS

The notion of a Government-granted "seal of approval" was not placed on the agenda by the Conference sponsors. It arose out of a discussion in which Lee Burchinal told about current NCEC plans for cataloging exemplary instructional programs in reading and making their locations known to other schools which might profit by writing or visiting. The conferees displayed great sensitivity to this kind of move by the Government and chose to offer their advice as to how the Government should proceed.

RECOMMENDATION 1: USOE/NCEC should not take any step toward Government endorsement of specific programs or products for use by the schools.

On this point, the participants were in virtually unanimous agreement. They said that any step toward endorsement of specific instructional practices or published products would be objectionable to all parties: the general public, the schools themselves, development agencies, and publishers and manufacturers. The conferees pointed out that Government endorsement could mislead schools into universal adoption of a program which was suitable only for some of them, could immediately disrupt the distribution of alternate products which were equally worthy but had not been so identified by the Government,could stimulate the creation of duplicate products built in the image of what the Government had endorsed, and could have other negative effects.

Lee Burchinal explained carefully that NCEC had no plans to "approve" instructional programs and materials but wanted to assist schools in finding outstanding programs worth considering for local adoption or adaptation. The conferees said they respected this as a worthy motive and went on to offer the following recommendation.

RECOMMENDATION 2: USOE/NCEC should help schools establish criteria for judging products and establish sound procedures for selecting them.

All those attending the Conference acknowledged that schools need good criteria and good selection procedures for choosing among available products. They said that the task has become more complex with the marketing of mult-media kits and the emergence of elaborate instructional machinery such as computers. NCEC iniative in solving this problem would be desirable and would be welcomed by the schools.

RECOMMENDATION 3: USOE/NCEC should explore how the Government might give schools information about instructional programs and materials which are being developed and distributed.

Those in attendance recognized that schools need information about products on the drawing board as well as about products already being marketed. However, they distinguished Governmental assistance to schools in getting information about products from the quite different matter of Government endorsement of specific products. They urged that Governmental activity be limited to giving information and stop short of giving approval.

The conferees tended to feel that any USOE/NCEC identification of a product would suggest endorsement. For example, they pointed out that demonstration sites selected and catalogued by the Government suggested endorsement of the products being used in those sites and gives an advantage to those products even if unintended. Nevertheless, they felt that the Government might constructively pursue a careful policy of "describing without rating" various instructional programs now in use. They suggested that USOE/NCEC might experimentally issue product information consisting of "news without editorial comment" to test school reaction. But even here, according to those at the Conference, the Government should proceed with caution. They saw this as an arena of Government activity where there are many ways to lose and few ways to win.

11. USOE COORDINATION OF GOVERNMENT RESEARCH, DEVELOPMENT, DISSEMINATION AND TRAINING IN EDUCATION.

Conferees discussed the present lack of coordination among the various USOE research, development, dissemination and training programs. Center and Lab directors, noting that their organizations were created and are financed as part of USOE's research and development efforts, pointed out that USOE does not coordinate their support with what it is attempting in its other programs. That is, USOE has not taken steps in the past to see that when one of its bureaus develops a new product, another of its bureaus actively disseminates that product, and still another bureau supports teacher training in the use of the product.

Publishers expressed an active interest in this topic, but for reasons rather different from those of Center and Lab directors.

> RECOMMENDATION 1: A formal study should be made of coordination among USOE's research, development, dissemination and training efforts so that a sound policy position can be developed by the Government.
>
> The conferees agreed after a lively discussion that advice on a proper policy for the Government could not be derived during this brief Conference and that careful, formal study was needed. A majority of the participants were concerned about the problems that would be raised for the schools, as well as for the development agencies and the education materials industry, if the Government were to initiate tight coordination among its various units. They pointed out that if USOE began strong promotion and training for a product developed by one Center or Lab and published by one company, the schools might find their choices sharply limited because the Government action placed other development agencies and other publishers at a competitive disadvantage in distributing parallel materials.
>
> The conferees saw the matter as particularly complex if publishers are being asked to help distribute Government-supported products. For example, a publisher may be unwilling to help finance a product during its developmental stages if USOE intends to help distribute a competing product which was developed under earlier Government sponsorship. Most of those in attendance agreed that highly-coordinated USOE-sponsored product development and distribution might upset the independent role publishers are now playing in education, a role which leaves them free to extend the range of choices available to schools -- choices encompassing materials originating under Government sponsorship and materials orginating independently.
>
> Even those few participants who felt that USOE should operate a tightly coordinated program to give schools maximum benefit from USOE-sponsored products agreed that this topic needs thorough study.

12. CONTINUING COMMUNICATION AMONG CENTERS AND LABS, PUBLISHERS AND MANUFACTURERS, AND USOE/NCEC.

Participants expressed their gratitude to USOE/NCEC for exerting its iniative in convening the group. They said they had learned a considerable amount about each other and had a far better understanding of how the Government-sponsored development agencies and publishers and manufacturers could work together. They also said they were grateful for the opportunity to advise the Government on its policies.

RECOMMENDATION 1: Another Conference similar to this should be called after a year of experience in working under the June, 1970 Copyright Guidelines. There should be a change in the roster of those invited so that the Government can hear diverse viewpoints and draw on the experience of additional organizations.

Participants felt that a further conversation between the Government, the publishers, and the developers would be necessary after a year. Further advice could be generated for USOE/NCEC, perhaps including a further modification of copyright policies. They said that one year of experience would be sufficient to indicate what they could accomplish and what new problems would arise as they attempted to work together.

Center and Lab directors and industry executives agreed that the two types of organizations should continue to communicate throughout the coming 12 months, but they could not agree on whether to continue with the informal methods of the past or to establish immediately a more elaborate communication system. Advocates of immediate action felt that constructive relations between developers and publishers could be established much sooner with a formal communication network. Advocates of informality felt that operating under the new Copyright Guidelines for a year or two would tell both parties whether a more formal system was necessary. Some thought that a simple information channel operating through AEPI would be a sensible compromise and suggested that the chairmen of the Lab and Center directors' group for the current year should communicate with the Executive Director of AEPI about arranging further communication between the developers and the companies as necessary.

There were some advocates for the introduction of a "marriage broker" into the relationship of publishers and developers -- a third party commissioned to become thoroughly informed about the interests of both. This third party might suggest or arrange contracts whenever the capabilities of a publisher seemed to match the development and marketing requirements of a particular Center or Lab product. Others of those attending thought that an intermediary service was not necessary and suggested that the two parties could get together without help.

GOVERNMENT SUPPORTED RESEARCH AND THE PUBLIC DOMAIN*

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I. Debate on the problems of ownership of intellectual property was sharpened by the establishment of a public domain policy declared by the U.S. Office of Education on July 12, 1965.

That policy declared that materials produced as a result of research activities which had been supported by funds from OE would be placed in the public domain. Such materials, said the OE, would be available to the private sector for its use.

Next from educational organizations and publishers came the strong argument that publication of research findings would be inhibited. On the contrary, asserted OE officials, this new policy would stimulate research and make its findings available to the most people in the shortest time with the minimum restrictions. Their primary purpose, they said, was to assure competition in producing and disseminating different versions of curricular materials.

No longer would researchers working under OE grants or contracts be allowed to copyright their research and ensuing educational materials, as they had before the OE 1965 public domain policy. Research produced with public funds would become public property to be evaluated, used and hopefully redefined in the educational market place.

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* This document is an approved condensed version of a paper prepared by Professor Julius J. Marke and is printed here with his permission. Professor Marke prepared his paper before the new USOE Guidelines, effective June 8, 1970 were promulgated. The new Guidelines now authorize copyright protection to the private sector for materials developed under project grants and conditions. The new Guidelines appear to be a complete departure from the former public domain policy of the USOE. It would appear that Professor Marke's recommendations with reference to copyright protection are now feasible under the new Guidelines. It should be noted, however, that an election must be made by the organization seeking copyright protection between it and the possibility of releasing the report, etc., to the public domain. It would appear, too, that the USOE is now amenable to any proposal from a grantee for copyright protection, provided it is in the public interest for the USOE to allow it. This is indeed a worthwhile development and should stimulate interest in the private sector for effective distribution of government supported research studies.--Eds.

To publishers losing exclusive ownership, OE suggested substitution of timely marketing and attractive presentation, such as the industry had successfully used in government public domain material on the Warren Commission Report and the Surgeon General's report on smoking and cancer. To scholars fearing modification of their materials, OE counseled trusting the risks of healthy innovation.

Through the July, 1965 statement OE aimed to preserve the free position of the government as a third party between consumers and publishers. Was a public domain policy or an open policy the best way to express this interest? It was not too clear.

Other federal grant-making agencies were forced to review their policies on this point. While many government agencies permitted contractors and grantees to self-exclusive publishing rights, there was much Congressional support for putting federally-financed discoveries in the public domain. Senator Long, for example, complained about denying the public access to "what it has already paid for unless it makes additional payment to the publisher who happened to secure the copyright." Did not copyright, said some proponents, prevent public information from being available to all on equal terms?

Publishers responded that only private expertise guaranteed the success of public-funded research; that the OE policy inhibited publication, restricted unnecessarily, removed incentive to inventiveness and hampered higher caliber research. Furthermore, said the publishers, the public interest varied as widely as the variety of government publications.

In any event, the publishers insisted, the copyright principle of fair use adequately protected the public interest. Accordingly they argued for a more flexible policy. Every federal agency, they suggested, should be free to decide whether or not to employ commercial publication for research results.

Historically such copyright protection for federally financed research had initially benefited the publishers during the expanding post-Sputnik period in the 1950's. At that time a government agency contracted with a university or other nonprofit agency. That agency formed a curriculum development team, and resulting materials were commercially published with copyright protection under competitive bidding.

That copyright protection dramatically revealed its limitations when the clearly dominant power position of M.I.T. physics material, promoted by government sponsorship, placed other physics textbooks at a competitive disadvantage. Then the publishers themselves urged placing all new course and instructional materials in the public domain. Then, they argued, each competitor would enjoy equal opportunity to publish his own version.

Against this background of private sector discontent, the OE issued its public domain policy in 1965. Placing all OE publications in the public domain did not please the publishers either. Quickly they requested limiting this policy to curriculum development materials. They still required copyright protection for all other scholarly and technical government-financed research reports.

II. After July, 1965 a heated and useful dialogue reminded both government and industry that new ways must be explored to protect their own interests and the public's.

Ways had to be found to encourage cooperation between the public and private sectors not only in funding the curriculum materials but also in pooling ideas and resources. The basic question was defined in terms of "how to keep knowledge and the economy free". Not one single, inflexible policy, but rather several carefully coordinated policies appeared to be in order.

Certain guiding premises were given consideration. The private sector conceded its dependence on the government to finance the bulk of its research activity. In turn the government recognized the commercial publishers' superior editorial resources, and the government's necessary dependence on the private sector's expertise, publication and distribution resources.

Furthermore, the government acknowledged that distinctions must be drawn between independent scholar-researcher products and large-scale team efforts such as in the curriculum area. Both private and public sectors realized that such team efforts demanded an entirely changed approach to the many facets of fiscal control. In addition, the government indicated that over-riding considerations of national interest and public need would now demand the government's right to use its materials, even if commercially published, on an irrevocable, royalty-free, non-exclusive license basis.

III. A second public domain policy of the Office of Education, issued on February 27, 1969, recognized a discretionary need for copyright protection for limited periods of time.

This policy was compatible with established policies of other government agencies. Such agencies had complete discretion in the types of grants and contracts they negotiated. They could insist on a royalty payment to the government or refrain from it to keep the price down. Their policy was to use complete discretion as to whether materials were placed in the public domain.

Uniformity of rulings for all federal agencies on the subject of public domain remains one desirable goal. However, Professor Marke recommends that, for the present, one federal agency, the Office of Education, should explore further modifications of their February, 1969 public domain policy.

IV. In conclusion a compromise course for government-supported research is chartered for the Office of Education.

Professor Marke recommends consideration of the following flexible course which may be reflected in contemplated changes in the copyright law. He suggests that OE's all-encompassing public domain policy should be one that recognizes certain proprietary rights at one stage of research and provides for a public domain policy at another.

For the period of the OE grant or contract, curriculum-development teams, through their contracting agency (university or other non-profit organization) should be given exclusive control (copyright) over all curriculum materials produced. During this period the government should bear distribution costs of this material in a preliminary or experimental form to all reasonably interested persons, institutions and government agencies.

Thus a dual desirable purpose would be served. The integrity of the team's work would be preserved; critical analysis and use by others would promote independent further research. Both these purposes would be consistent with the public's benefit.

Later, after the grant or contract term expires, the materials would go into the public domain. A moratorium period of one year would follow during which no one could publish the material. Its purpose? To afford publishers as well as team members an opportunity to develop commercial editions. Publishers might decide to proceed with competing teams. Further protection for the original team's authorship might require publishers to acknowledge the project, authors and original sources of support.

To protect the government's interests the federal agency involved would obtain from any copyright holders a royalty-free license to use all these materials as it wants.

Next Professor Marke states several suggestions of the private sector as represented by the American Textbook Publishers Institute. ATPI wants all curriculum-development materials placed in the public domain as soon as released, even if still in the experimental stage. ATPI insists that only guideline or raw prototype materials, rather than finished materials, should be developed. To recapture their costs of marketing and distribution ATPI wants copyright protection for at least ten years before the public domain policy applies. ATPI further points out its potentially valuable role in redeeming "run of the mill" documents. Copyright protection will encourage publishers to invest time and capital in these reports, effectively increasing public knowledge.

Professor Marke responds that recognition must be given the technological developments that are taking place in the information storage and retrieval fields. Dynamic developments in these fields may soon render many questions raised in this paper immaterial.

In the near future technical and scientific publishing may be replaced by information storage and retrieval systems. Traditional forms of the book, journal and reprint may give way rapidly to the machine storage of graphical and digital information and machine-generated copy. The technical publishing business may gradually be transformed into the information handling business. Should this occur, there is danger that the information handling business may become bogged down in its own products. Approximately 60 million pages of scientific and technical information are now published annually. Not only is the amount of information on a specific subject daily increasing, so is the information's rate of obsolescence.

(A) Any change in the present government policy on public domain must recognize the prime need of both public and private sectors for immediate accessibility to all the knowledge uncovered by research and development.

The new technology must be used not only to store and retrieve documents, but also to retrieve information and remove obsolete materials. Unless most scientific and technical materials now available can be used quickly, they may be wasted.

Professor Marke reviews the new information-retrieval patterns already emerging in government agencies. Some of the major agencies -- notably NASA, the AEC, the Clearinghouse for Federal Science and Technical Information, and the Defense Documentation Center of the Office of Education itself -- are disseminating their scientific and technical reports on microfiches. (These compact the physical size of the record.) It is likely that federally funded materials will increasingly be disseminated through information centers -- either by remote transmission or hard copy or microfilm. Microfiche charge for materials, believes NASA, soon can be reduced to less than 1 cent per fiche. Even more dramatic developments are expected by COSATI, a government Committee on Scientific and Technical Information. COSATI is considering the feasibility of making available in the U.S. at least one copy of every publication of worldwide scientific and technical significance.

Federal agencies are discovering that the "non-book" approach allows them more freedom and control over information and knowledge developed under government grant or contract. Except for special publishing situations, the agencies' interest in the commercial publication of their federally-funded reports is waning.

(B) Operation of the Office of Education already reflects dynamic changes in handling its information.

Its own information network has come to be known as ERIC (Educational Research Information Center). It is a decentralized, nationwide network of information clearinghouses and research documentation centers, coordinated with the OE. All OE research publications from 1954 to date will eventually be stored and serviced by ERIC. Satellite centers will select and store the documents based on the subject specialty of each center.

ERIC on request will supply bibliographies and abstracts. It will also provide reproductions either in hard cover at 4 cents a page or in microfiche form at 9 cents a fiche. The day is not distant, says OE, when ERIC will link universities, professional organizations, school systems, boards of education -- indeed, the entire educational system.

At present ERIC seeks permission from copyright holders to copy from their work. Orders for material are generally filled within five days of being requested.

Faced with these federal developments the private sector insists that the federal government cannot match private industry in the distribution of printed materials. Lee Deighton of Macmillan recently acknowledged that some information emerging from government-funded research might be more suitably presented in microform than in journals or books. But he recorded the private sector's reservations: "The interests of public information can be served only by commercial publication under protection of the Constitution." He doubted that free men would ever "willingly turn over to the government the full control of information in any area". He further predicted that commercial publishing and printing would suffer great losses if the government information system were developed to the point where it would contain all significant information -- from whatever source and in whatever form.

(C) An inflexible public domain policy by the Office of Education may not be necessary to achieve its objective.

Professor Marke observes that such inflexibility would appear to hinder rather than promote creative cooperation between the government and private sectors.

It may be preferable, suggests Professor Marke, for the OE as well as other grant agencies to consider a more flexible, discretionary program. He recommends that the sweeping policy of public domain for government-sponsored research reports should be abandoned whenever the public interest demands it.

Instead the agencies should accept the principle expressed in the proposed copyright law revision, which continues the present prohibition against copyright in published works of government, but recognizes that this does not arbitrarily apply to commercial publications resulting from government support of research.

These proposed revisions allowing discretionary powers would fit in well with the government's information-retrieval objectives. It would also permit the private sector to make its contribution to the production and dissemination of these reports. At the same time the government's discretionary powers would be protected by the new provision that any such copyrighted publication would be subject to royalty-free, non-exclusive and irrevocable license for the government.

Granted would be the government's rights to reproduce materials, translate them, publish them, and authorize others to do so. Such an approach should be adaptable to the new information services the government is developing.

Professor Marke further maintains that creators of government reports should be allowed to negotiate privately with publishers for discretionary reasons. If the government agency desires to limit profits, it could arrange for part of the royalties to be returned, or it could ask for an assignment of copyright to the government and a license in return for exclusive publication rights for a limited period of time.

What about government-supported research reports which merit commercial publication for the sake of public interest? The government won't lose by providing copyright protection for such reports, insists Professor Marke. Under the government's royalty-free, non-exclusive and irrevocable license the government will be free to add this material to its document-storage and information-retrieval systems. Public accessibility will be maintained despite copyright protection.

Commercial publishers will also benefit by this arrangement. To offset losses caused by the government's reservation of the right to reproduce and sell these works, publishers could negotiate more advantageous royalty terms with the initiating agency at the contract stage. Thus a market would be guaranteed for both the products of ERIC and the copyrighted commercial publication of OE materials. A sufficient number of researchers would probably rather buy commercially published reports instead of ERIC microfiches if the price was right.

In arranging for publication of copyrighted editions of government-sponsored reports, the government could offer two alternatives. First, it could allow the grantee or contracting party to negotiate his own terms with the publisher, subject to supervision of the granting agency. Second, the agency could arrange the contracting terms. Some agencies would wish so to do. Others already find administration of such contracts burdensome.

Publishers would prefer uniform regulations enforced by all agencies. Something like this might be accomplished if all agencies adhered to a policy of closed competitive bidding. Considerations, for example, would include the lowest price to the buyer, a number of copies given free to the government, and royalty payments to the government and/or the author.

Still another approach would be the government's establishment of a common policy on publicly supported research grants. This done, it could be centrally administered. Such an approach could be done through a presidential or standing committee, such as a joint House-Senate committee working closely with the Bureau of the Budget.

Not only in Congress but also in the intellectual community these new approaches need to be debated. Hopefully, they will improve the quality of research supported by the Office of Education. Equally important, these new approaches may foster in educational research generally a new and healthy innovative competition, cooperation and creativity.

THE INTERESTS AND CAPABILITIES OF THE EDUCATIONAL MATERIALS INDUSTRY IN RESPONDING TO NEW USOE POLICIES

Melvin Barnes
Vice President, Professional Relations
Scholastic Magazines, Incorporated

The educational materials industry is committed to sound education and backs up this commitment with able editing staffs and the support of many educators who serve as advisors and consultants. Naturally, the industry is deeply interested in USOE's quest for better means of teaching and learning. We applaud the promising development of the R & D Centers and Labs and look forward to closer cooperation.

We in the industry share the USOE's concern for improved performance in research, development and dissemination. Publishers are acquainted with all steps along the research-development-dissemination continuum.

It must be said, however, that the times are not particularly propitious. The boom market for educational equipment and materials, widely predicted in the mid-1960's, has not materialized. The immediate future looks no better than the immediate past, and perhaps a trifle worse. Publishers are feeling a bit less venturesome than three to five years ago.

As you know, elementary and high school enrollment has levelled off and will grow only about one percent per year in the next few years. This is a good statistical reason for conservative estimates of the size of the market. You have to add to that the fact that school spending has been levelling off after steady rises throughout the 1960's. Book sales were not much higher in 1968 than in 1966, although sales of audio-visual materials were up about 20 percent. Much of the new money spent for education in the 1960's and much that will be spent in the years ahead will go into teachers' salaries. A school budget is mostly salaries and wages. The hidden need for materials of instruction is vast and often unrecognized. Education is still a technologically primitive, labor-intensive industry -- a condition that will be slow to change. In short, the bull market of the 1960's in the materials industry may be followed by a bear market in the 1970's.

There is as yet no mass school market for technologically sophisticated equipment and materials. Companies which bought textbook houses in the 1960's in the expectation of a mass market for advanced hardware/software packages are having second thoughts. In some cases they are loosening their ties so that the textbook publishers can operate more or less independently.

Despite the above predictions, publishers sometimes do not use very complex techniques for surveying the school market. They tend to listen to the reports of their salesmen, who like to avoid customer complaints of the kind new products sometimes bring, and tend to be a somewhat conservative influence in their companies' thinking.

Publishers are expert in editorial services, media and graphics, and knowledge of the market. They know about authors, editors and the process of field testing. Curriculum developers who completely finish their products (something the individual author almost never does) are overlapping publishers' areas of expertness needlessly. They even give publishers problems in what to do with their fixed-cost personnel, who are awaiting products to finish.

The materials industry has an understanding of marketing and a well-developed distribution system which no educational product developer can match. What industry knows about market acceptance can help the developer improve the design and the utility of his product. In addition, the publisher can relieve the developer of the responsibility for promoting and disseminating his materials, freeing him to develop and test yet more products.

Many major publishers have had some experience with the curriculum reform projects of the 1960's. These experiences were a mixture -- some were a success and some were a failure. They were costly. They were often inadequately field-tested. Evaluation was usually an after-thought. Moreover, some curriculum groups refused to think of publishers as anything more than printers and sellers of books. This led to resentment on the part of certain publishers who felt capable of becoming true partners in the venture of designing new materials but never had a chance.

Traditionally publishers have produced what they sold, working in conjunction with outside authors, and it is only recently that they have considered distributing what has been produced solely by someone else. Remember, they are staffed not only to sell, but also to design products. Obviously, if publishers are to contribute at their best they will have to get into the process early.

No good figures are available on what the materials industry can spend on research and development on new products, but I have mentioned the current bear market which limits available capital. Development is often expensive as you in the Labs know well enough.

If a company should make a joint investment with a curriculum development agency such as a Regional Laboratory or an R & D Center, but that agency persists in unending testing and never releases the product, the company cannot recover its capital. The USOE is not there with annual risk capital. Timing is critical. Publishers are accustomed to producing the best material they can in time to meet a deadline and are usually not able to afford the repeated trial and delay which are the natural and perhaps desirable behaviors of the government-supported Center. Laboratory and Center products may cost more for schools to buy and install than other materials do. Will the schools be ready to pay the extra costs, even for validated products? Moreover, revisions have to be made and the seller has to provide for continual evolution of products.

Publishers and equipment manufacturers have traditionally not supplied -- and the schools traditionally have not paid for -- the amount of training which may be needed to learn how to use Lab and Center materials. If Lab and Center materials have to be "used exactly as directed" in order to be successful, if the customer has to be supervised as he uses the product, this makes a whole new set of demands which publishers will have to learn how to perform and schools will have to be willing to buy. The most intelligent and effective use of materials often depends on teacher training. We have to come to terms with this problem.

In the past, the USOE public domain policy has probably dampened the enthusiasm of many publishers for USOE-sponsored products. The new copyright policy may solve this problem but at the same time it obligates USOE to see that all the industry has equal access to the products insofar as possible so they can bid for the copyright privilege. This conference will help to clarify this nebulous domain.

At present, there is no easy way for the Industry to keep track of what is happening in all the USOE-sponsored Labs and Centers. If an appropriate communication system could be devised for this purpose, that would be a real achievement. I know the problem is under continual study.

This conference is most welcome. We commend IED for a fine job in getting it together. It is a good time for the materials industry and the USOE to talk things over. We have important business to do together.

HOW DO WE GET IT TO HIM?

Fred S. Rosenau
Director, General Dissemination
Far West Laboratory for Educational
Research and Development

In marketing, according to Robert Townsend*, we must address ourselves to five basic questions:

What are we producing?
For whom?
At what prices?
How do we get it to him?
In what form?

But in educational research and development -- as personified by the regional laboratories established under Title IV of ESEA -- we tend to add one other question:

How do we know it's ready?

For in our efforts, we are under a special kind of pressure. As new institutions we must prove ourselves not only to the ultimate users of our products, but also to our sources of seed money -- the executive department of the government, the legislative sector, the scientific and technological community, and the foundations. To obtain funding we are urged to "Get It Out". To build a reputation for quality, we are urged to "Be Sure It Works".

That dilemma is one we must wrestle with continually in our internal decision-making. If we carry on our rigorous development and testing cycle so as to examine all possible variables, we will probably never get our products into the schools and colleges. But if we push them into use too hastily, we will provide only temporary and patchwork "service" and no real long-run solutions to urgent educational problems.

We wrestle among ourselves with the question of timing for release of our products -- are they ready or do we need to revise and retest? -- but as yet we have no firm guidelines to share with others.

Yet when we do actually face the dissemination of completed, validated products, we have a number of options.

The first is, in some respects, the simplest -- public domain. We can produce something educators need and simply give it to them gratis while the supply lasts. School and college people near us will probably obtain the product, if we do so. But our annual contract with the Office of

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* In Up the Organization, Knopf, 1970.

Education provides us certain funds for specified tasks. Therefore, if we reproduce and continue to give away a popular product, the needed funds will have to be siphoned off from other urgent development work, since such costs cannot be recouped. Further, as Sears, Roebuck and the furniture industry (among others) have clearly demonstrated, a free giveaway usually does not reach the best customer for your products. For what's given away free is often not highly valued by the recipient.

Some publishers have been willing to add public domain materials to their lists-- by introducing front and back matter or illustrations or by repackaging. But so far the most promising channel of public domain dissemination for Laboratory publications seems to be the Superintendent of Public Documents. Printed materials can be made available nationally at modest cost and without undue red tape, but the Laboratory must still face the tasks of promotion and publicity for its publications. Also the Laboratory must accept a reasonable amount of inventory for its own use in order to activate the first printing of each new item.

Another public domain channel -- not yet fully explored -- would be the establishment of a number of Laboratory-controlled non-profit sales arms. Through these arrangements, public domain products could be sold by direct mail to potential users. However, the handling costs on small orders are brutally high, due in part to the elaborate paperwork required in serving institutional customers.

Yet a major difficulty still remains in all these public domain possibilities -- the materials so distributed cannot be "protected" by the original developers. If full copyright protection for the product is lacking, any zealous school can so alter the tested product as to render it virtually useless. The very person whom the product was intended to help might receive only part of it, or a bastardized version. Or by himself, in all goodwill, he might reshape it to his own perception of what will "work" for him.

If a product-development Laboratory has done its job carefully and well, it should search for every form of protection then available. Its aim should be to assure actual installation and use in strict accordance with the prescriptive instructions that were validated during field testing.

Dissemination can be accomplished via other non-profit channels (with or without copyright protection, as the situation warrants). University presses reach the college and library markets. University extension divisions and state departments of education distribute audiovisual materials. NEA, NCTE, NCSS, and other professional organizations sell their own publications. Educational Products Information Exchange, the Anti-Defamation League, and other non-profit organizations can actively sell and promote educational materials that are suited to the overall objectives of the particular agency. Various branches of the government lend films and other materials to schools and colleges for classroom use.

With copyright protection for selected products, one or more Laboratories might be able to establish their own non-profit distribution agency, staff it, and eventually make it self-liquidating. But without a fairly steady flow of incoming orders, and without a fairly broad line of products, such an enterprise will very likely require a subsidization for a considerable period, there being no "back-list" to sustain the fledgling venture.

Another option, now being explored, entails subcontracting the distribution task to another non-profit organization. In this case the inventory risk would probably remain with the Laboratory, but the day-to-day minutia of order processing and fulfillment would be assigned to the subcontractor.

In the long run, if the Laboratories as a group receive firm assurance of continued funding, an inter-Laboratory distribution arm could be created to carry out demonstrations, sales, order fulfillment, warehousing, etc. Presumably, with a broad spectrum of completed products available, this non-profit agency could do a professional job of dissemination and installation of all useful products. But there would be problems. Some school people distrust innovations that carry a "federal" label. Some legislators would feel such an agency should not exist in the first place. And the American Educational Publishers Institute would view such an enterprise as a potential threat to its member firms.

As we move from consideration of public domain toward the possibility of limited copyright, the hardware industry looms as a potential avenue of distribution for some Laboratory products. In viewing this segment of the private sector, we tend to believe that the firms have ample financial resources, recognize the need for a significant research and development commitment, employ a number of talented field representatives, and are often seeking to effect innovations in educational practices. These positive indicators are offset to a degree by the problems Laboratories may face in turning to the hardware people. Their sales effort may be directed through regional or local wholesalers and/or dealerships. These firms, to date, have been somewhat uncomfortable with developers of software. And a new educational product will, obviously, only interest those firms who can make it conform to their own hardware specifications.

At the present most copyrightable Laboratory products with mass-market appeal have attracted the interest of the educational publishers -- as contrasted to the dissemination possibilities considered thus far.

The educational publisher, at his best, offers the educational product developer a number of identifiable assets. Usually the firm is adequately financed to handle production and distribution. It has experienced management and experienced field men, who visit all the domestic school districts and all the teacher-training institutions. It has reasonably experienced advertising, publicity, and direct-mail personnel. It is likely to exhibit at most suitable national education meetings. It can deal with the needs of the military establishment, and the English-language world market. It is likely, today, to be allied with producers of audiovisual materials and technological systems. And it is prepared to pay fair royalties.

This seeming paragon must be examined for its possible blemishes, however, if the Laboratory seeking a distributor is to achieve a compatible relationship. Will the potential distributor retrain his field men to handle a totally new product -- or will he simply treat the innovation as a simple "textbook adoption" task? Will he permit his staff to make extravagant promises regarding the new product -- or will he confine his product claims to the field-test evidence? Is he willing to take the substantial risk implied by the limited term of copyright? Is he willing to face the implications that the new product may hold for his established older texts? Is he in a position to offer the schools both sales and rental options? Is he likely to increase the selling price if sales decline, or to reduce it if sales increase? These are only a few of the many questions each Laboratory must consider before making a formal Request for Proposals.

The Laboratories themselves have a variety of problems that the educational publishers probably recognize already. Obviously, in contrast to older established institutions, they are relatively frail and uncertain -- almost babes in the woods in some respects. They operate under detailed contracts with the U.S. Office of Education, and these contracts -- combined with other state and local stipulations -- impose a spider's web of constraints on each and every activity. Every new step forward entails extensive (and expensive) legal consultation. Not only are many of the Laboratories physically distant from the headquarters of the educational publishers, but the Laboratory staff is often somewhat unclear as to who are the actual decision-makers in the publishers' hierarchies.

The Laboratories must protect themselves prior to dealing with the private sector, by obtaining releases from all their employees so as to establish legal ownership of the product prior to distribution. They must obtain releases from teachers, parents, and children who are used in photographs or films or tapes or slides. They must obtain permission to use copyrighted excerpts in curricular materials. And, should they move into collecting portions of the "traditional" verbal heritage from ethnic minority groups, they will be entering almost unexplored legal territory in terms of ownership rights. These points merely suggest some of the issues involved in the early stages of public-private cooperative efforts.

How can a publisher help? Obviously when the educational publishing industry interacts with legislators and with stockholders, it can say a few good words about publicly-funded educational research and development activities. The publisher's management and its staff can publicize the Laboratories' products. Field men can provide specific feedback on how the products perform in normal and abnormal situations.

A publisher can also help in development -- if an alliance between Laboratory and ultimate distributor is forged early enough -- by aiding in audiovisual production, in design, in editing, in market research, etc. But such cooperation will always hinge on the Laboratory's internal decision-making process: How early in the development cycle should the distributor be selected and precisely what will be the roles of each partner?

Once the commercial distributor has an investment in the product, he will be looking for results. Suppose a key field test goes sour, but the product "looks" ready anyhow -- or suppose the product is unique and urgently needed: how long can the Laboratory product-development team stave off school and publisher pressure for early release?

Will the Laboratory be more willing to "educate" users to rigor and quality than the publisher? How can urgent demands for help be balanced against the need for sound development and quality control? No answers have yet been established.

With all these unknowns, will some publishers be willing to offer guarantees against future royalties? Or to award outright grants to the non-profit developers? Are some Laboratory products too complex or too expensive for realistic installation into today's schools? Some of these perplexities might be discussed if AEPI and the Laboratory directors could establish a schedule of annual meetings.

Collectively we both have some very tangible assets. The incumbent copyright program officer in USOE has quietly but effectively helped all parties involved unravel a multiplicity of unanticipated difficulties. The publishing industry has shown its goodwill through an inclination to take reasonable risks. The lack of precedents has probably helped more than hindered. The OE guidelines have consistently been liberalized for mutual benefit. And, of course, since the schools are desperately seeking all kinds of help, Laboratory products are likely to find a warm reception -- within the limits of local budgets!

INFORMATION PAMPHLET
ON
U.S. OFFICE OF EDUCATION COPYRIGHT PROGRAM*

Background: The purpose of this pamphlet is to provide information about the U.S. Office of Education (USOE) Copyright Program. It is a supplement to the Copyright Guidelines which were published in the Federal Register on May 9, 1970 (35 F.R. 7317) and became effective June 8, 1970. The information is provided for those institutions and organizations which are developing educational materials under USOE contracts and project grants and which desire to obtain commercial dissemination, under copyright, for those materials. (All section numbers shown in parentheses refer to the Guidelines sections most pertinent to the matter being discussed.)

The USOE Copyright Program has two primary purposes:

1. To help maintain the integrity of materials in the process of development, test, and evaluation, prior to commercial dissemination, and

2. To facilitate the commercial dissemination of materials after they are developed.

The Copyright Program is administered by the:

Copyright Program Officer
National Center for Educational Communication
U.S. Office of Education
400 Maryland Avenue, SW.
Washington, D.C. 20202

Development of Office of Education Copyright Policy: The current Statement of Copyright Policy supersedes the Policy statement of March 1, 1968 and the new Guidelines supersede the Guidelines which were issued on June 24, 1968.

The chief differences between the previous policy and the new policy, as reflected in the Guidelines, are:

1. Emphasis on public domain discarded. Under the previous Guidelines an attempt had to be made, unsuccessfully, to obtain commercial dissemination without copyright as a precondition to seeking authorization for dissemination under copyright. That precondition does not now exist.

2. Copyright royalties shared with developers. Any contractor or grantee, which is a nonprofit organization, may retain a minimum of fifty percent of copyright royalties formerly payable to the Government. Under the previous Guidelines a contractor or grantee was prohibited from retaining a share of the royalties.

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* Draft Copy, June 8, 1970.

3. USOE authorized to arrange dissemination under copyright. In the event the developer is unwilling or unable to arrange for commercial dissemination, either with or without copyright, the USOE may make arrangements directly with the disseminator. Previously that authority did not exist. Any copyright authorized to be claimed may then be in the name of the disseminator. The developer will not under these circumstances share copyright royalties.

4. "Thin market" materials require less formal procedure. In order to expedite the dissemination of materials which are not directed at a mass market, it is no longer necessary that a formal "request for proposals" be issued to a large segment of the dissemination industry. The previous Guidelines did not distinguish between "mass market" and "thin market" materials.

5. Exclusion from Guidelines procedures authorized for articles published in professional journals. No specific authority from the USOE is now required for the publication, in copyrighted scholarly and professional journals and in similar periodicals, for articles based upon work performed under a USOE supported project. The previous Guidelines were silent on the procedure for publishing such articles.

Protection for Materials During Development: (Sec. 13) During the development process it is often necessary to distribute materials as part of the development and testing procedures. Some of these are "unproven" materials. To prevent the premature release the USOE will authorize the contractor/grantee to claim copyright for a limited time period prior to completion of development. At the end of that period such materials must be available for placement in the public domain unless the developer obtains copyright authorization from the USOE to facilitate commercial dissemination of the materials under copyright.

To obtain authorization for copyright during development it is necessary for the developer to send a letter to the Commissioner of Education, addressed to the attention of the Copyright Program Officer, requesting such authorization. That letter should include:

1. The contract/grant number.

2. The award and expiration date of the contract/grant.

3. The Regional Office which awarded the contract/grant, if other than Headquarters USOE.

4. Identification of the materials for which copyright is desired, with a copy if available.

5. The period during which copyright would be claimed (normally to terminate no later than the scheduled contract/grant expiration date).

6. The reason copyright is deemed to be necessary.

7. The name of the project director.

8. The name and address of the USOE project officer.

9. Generally, the dissemination plans for materials after development.

10. The distribution plans for test and evaluation of experimental materials.

(This information, except Item 10, must be provided also when requesting copyright authorization to facilitate commercial dissemination of final materials.)

Dissemination Channels: (Sec. 3) Many dissemination channels are available. The developer should select the one which has the greatest likelihood of achieving widest use of his materials. Release of materials in the public domain (without copyright) is one approach. Public domain dissemination normally requires no specific approval by the USOE. However, if the developer elects to disseminate without copyright then it may not disseminate or have disseminated a copyrighted revision within twelve months after the publication date of the uncopyrighted version.

Copyright Protection: The USOE does not grant copyrights and does not register copyright claims. Copyright for a book is secured by publication with the appropriately-worded copyright notice applied. After copyright is secured it is made a public record by registering it with the U.S. Copyright Office in the Library of Congress. Copyright will prevent any one other than the copyright proprietor from copying, publishing, translating, etc., the author's work. The USOE merely authorizes the securing of copyright and stipulates the terms and conditions, including that portion of the statutory copyright term, for which copyright for materials developed with its support may be claimed.

Commercial Dissemination under Copyright: Dissemination under copyright normally involves three parties: the developer, the disseminator (sometimes referred to as the publisher or distributor or producer) and the USOE. (A fourth party, the author or author team, may also be involved.) The materials are normally published by the disseminator, under arrangements with the developer, and with the approval of the USOE.

Incentives: (Secs. 10 and 12) In revising its copyright policy the Office of Education has sought to increase the incentives for developers and disseminators to seek widespread use of materials developed with USOE support. The Office of Education recognizes that the disseminator is entitled to make a profit from the undertaking; the developer (unless it is a profit making organization) will share the potential royalty income; and the educational community should benefit from ready access to attractive tested educational products at reasonable prices.

The U.S. Office of Education will share royalties with any cosponsor, including the contractor/grantee developer, in proportion to the financial or material contribution each co-sponsor made to the development project. The Government will permit a developer to retain 50% of net royalty. (Net royalty is defined as that amount remaining after any co-sponsor or co-sponsors, other than the U.S. Office of Education and the developer, has received its share.) However, if a developer believes his cost share to have been proportionally greater than the royalty share it would receive under the 50% net royalty formula, it may elect to receive a royalty share which corresponds with its cost share. In that event it will be necessary for the developer to demonstrate to the satisfaction of the Commissioner of Education that its cost share was as alleged.

Cost sharing may be parallel, sequential or a combination of both. In other words, the U.S. Office of Education may cost share with a co-sponsor during the same time frame or during a different time frame. The latter could happen under three different circumstances. In the first circumstance the Office of Education could add support to a project which had begun, but was not completed, under the support of another. In the second circumstance another organization could augment a project which was begun, but not completed, under USOE support. In the third circumstance there might be overlapping support, which would be a combination of parallel and sequential support.

Procedures (General): (Secs. 4 and 6) The developer is expected to initiate the action necessary to obtain commercial dissemination. If the copyright approach is going to be taken then copyright authorization from the USOE must be obtained. The request for copyright authorization must be accompanied by plans for obtaining competition for dissemination. (See the following procedure for mass market materials.) If the materials to be disseminated are deemed to constitute "thin market" materials the developer has the option of taking the "mass market" approach or a less formal approach. However, the "thin market" approach will be acceptable only if the Commissioner agrees that the materials do in fact so qualify.

Procedures (Mass Market Materials): (Sec. 4) The request for copyright authorization to facilitate commercial dissemination under copyright should be in the form of a letter to the Commissioner of Education, addressed to the attention of the Copyright Program Officer, and should include the information itemized in the paragraph headed: "Protection of Materials During Development." Also to be included is the documentation specified below:

1. A proposed "Request for Proposals" (RFP) which the contractor/grantee would send to potentially interested members of the publication/distribution/information (dissemination) industry.

2. A list of companies to which the RFP would be sent. (As an alternative approach the contractor/grantee could distribute a notice of availability of the RFP but send copies of the RFP only to those companies which ask for a copy.)

3. A set of criteria for selecting the successful company. The RFP should identify the materials to be disseminated, state that the materials were developed under a USOE contract or grant, and specify the developer's dissemination goals. It should solicit the disseminator's response to various aspects of dissemination such as:

(1) The capability of the disseminator to do the job.

(2) The technical and editorial staff which will be assigned, and the amount of assistance which will be furnished.

(3) The sales and promotional effort to be applied.

(4) The manner in which the materials will fit into the disseminator's portfolio of products.

(5) The priority which will be given these materials.

(6) The proposed format of the finished product.

(7) Plans for teacher training.

(8) Approximate sales or rental prices.

(9) The royalty schedule.

(10) The time frame for publication and distribution.

In addition, the RFP should indicate that the final dissemination agreement will contain provisions specific to this situation, including the requirements of the USOE copyright authorization agreement, and also usual dissemination agreement provisions. The disseminator should be invited to furnish, with its proposal, a proposed dissemination agreement.

The list of companies should include all those which likely would have an interest in competing for the opportunity to disseminate.

The criteria for selection should be included in the RFP. That is simply a list of the developer's dissemination goals set down in their order of importance. These goals may be "weighted" if the developer so desires.

Involvement of Publishers in Development: (Sec. 7) Educational materials must be developed with the understanding that, to have the maximum impact, the materials must be effectively disseminated after development. Proper planning during development will facilitate a smooth and rapid transition from the development phase to the dissemination phase. With respect to curriculum materials, particularly, the dissemination industry can help give proper direction to the development effort. Contact between the developers and the disseminators during development is encouraged provided no commitment to a disseminator is made, to disseminate materials under copyright, unless the Copyright Guidelines procedures are followed.

If the developer desires to have a disseminator actively participate in the development effort, with a commitment to the disseminator to disseminate the materials under copyright after development is completed, it may obtain approval for that arrangement provided it utilizes the competitive procedure required by the Copyright Guidelines and described more fully herein. In that event the proposed RFP, which would accompany the request for copyright authorization, would encompass development functions as well as dissemination functions to which a disseminator would be required to respond if it desired to be considered for that commitment.

Procedures (Thin Market Materials): (Sec. 6) If the developer believes that the materials it desires to disseminate qualify as "thin market" materials it may take one of the following approaches: It may request copyright authorization in the manner specified for mass market materials but, instead of providing a proposed formal RFP, the developer may indicate that it considers the materials to qualify as "thin market," provide a copy of a letter which it proposes to send to interested disseminators (a minimum of three), identify the disseminators to which the letter would be sent, and await approval by the USOE before sending to disseminators copies of the letter. When approval from the USOE is received, in the form of a copyright authorization agreement, the developer can mail the copies, receive responses, evaluate those responses, make a selection, and send the selection to the USOE for approval of the selection. The next step would be to prepare a dissemination agreement and obtain approval of the terms of that agreement from the USOE prior to executing the agreement.

The alternative approach would be to prepare the letter, send it to appropriate disseminators (a minimum of three), receive and evaluate responses, make a selection, and then obtain approval from USOE.

The first alternative is the preferable approach and is recommended for use particularly by developers who are attempting the procedure for the first time. In this way, suggestions can be made by the Copyright Program Officer concerning the proposed letter so that many problems and difficulties can be avoided. In either case copies of all responses should be furnished to USOE together with the rationale for making the indicated selection, as a basis for USOE approval.

The second alternative is obviously a short cut method. It has the advantage of avoiding involvement of the USOE in situations before it is determined that there is sufficient interest on the part of the dissemination industry to make a copyright authorization request worthwhile. It has the obvious disadvantage that the approach utilized may not be approved by the USOE, which might result in repeating the procedure, or a portion of the procedure.

The letter to be sent to the disseminators should be tailored to fit the situation. If the developer has certain dissemination goals, those should be stated so that potential disseminators will have an adequate basis for response. The disseminators should not have to respond on the assumption that they know the developer's dissemination goals.

Waiver of Requirement for Competition for Dissemination: (Sec. 12) Although the concept of competition for dissemination is one which is intended to assure that one disseminator does not obtain an undue advantage over another and is intended also to assure the most beneficial arrangement for the purchasing public, it is recognized that competition is not practical for all materials. Sometimes the market is too limited for competition to be economically justified. In other situations only a single disseminator has the capability to do a unique job. In these situations and in some others the requirement for competition will be waived when a determination is made that such a waiver is in the public interest.

Copyright Authorization Agreement: (Secs. 8 and 9) Approval of copyright authorization requests are made in the form of agreements signed on behalf of the Government by the USOE Contracting Officer, and on behalf of the contractor/grantee by official of that organization authorized to sign such agreements. The agreement, if it is to facilitate the dissemination of final materials will, at the same time it authorizes the securing of copyright, approve also the dissemination plans, either as submitted or as modified to accord with the Copyright Program requirements.

The copyright authorization agreement will normally include, but not be necessarily limited to, the following:

1. A statement to the effect that the USOE merely authorizes the securing of copyright. It does not grant a copyright or take a position on the copyrightability of the materials.

2. An identification of the materials to which the agreement is applicable.

3. The license which is granted the U.S. Government.

4. The time period during which copyright may be claimed.

5. The action which can be taken by the Commissioner in the event of noncompliance with the terms of the authorization agreement.

If the authorization agreement is for the purpose of facilitating the commercial dissemination of final materials, the agreement will include the following also:

1. A date by which dissemination must be accomplished, which date may be extended for good cause shown.

2. The special legend to appear adjacent the copyright notice on materials to be published, showing the expiration date of the authorized copyright period.

3. The authority to issue the RFP, accept proposals, and make a selection.

4. The formula for sharing of potential royalties by the Government and the contractor/grantee.

5. The treatment to be accorded revisions and adaptations.

Additional USOE Approvals: (Sec. 8) The USOE must approve first, the selection of the disseminator and second, the final dissemination agreement. Ordinarily, this is done in two separate actions. However, the circumstances may in a special situation warrant making both approvals in the same action. If the requirement for competition for dissemination is waived, the selection of the disseminator and perhaps also the dissemination agreement, may be approved as part of the copyright authorization agreement.

Procedural Flexibility: (Sec. 12) Although a sequence of steps to accomplish commercial dissemination under the USOE Copyright Program is provided and contractors/grantees are urged to follow that sequence as the best mode in which to accomplish the objectives, it is the objective and not the sequence which is important. The objective is to obtain effective dissemination, in a manner which will serve the public interest, and without giving any one disseminator an undue advantage. In this vein some developers have found it advantageous to hold a briefing for disseminators either before or after the RFP is issued, in the interest of better communication and clarity.

Publication Arranged by the USOE: (Sec. 11) In any case where a contractor/grantee is unwilling or unable to disseminate or have disseminated the materials it has developed, either with or without copyright, then the USOE may undertake to arrange commercial dissemination. It is important, therefore, that the USOE be kept informed of the contractors/grantees intentions with regard to dissemination. In that regard the USOE is currently planning a procedure which is intended to help the contractors/grantees to keep both the USOE and the disseminators informed of their dissemination intentions.

Publication in Scholarly and Professional Journals and Periodicals: (Sec. 5) Publication in journals and periodicals is exempt from the procedural requirements of the Copyright Guidelines. Therefore, no approval from the USOE is required before such publication is arranged. However, such action will still be subject to the nonexclusive, royalty free license in copyrighted materials which the Government is always granted by the terms of the grant or contract out of which the article to be copyrighted emerged.

Additional Information: For further information contact the Copyright Program Officer, National Center for Educational Communication, U.S. Office of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202.

GUIDELINES ON AUTHORIZING COPYRIGHT PROTECTION FOR MATERIALS DEVELOPED UNDER PROJECT GRANTS AND CONTRACTS*

U.S. Office of Education

Section 1 -- Purpose and Scope

(a) The U.S. Office of Education is issuing with these Guidelines a revised Statement of Policy (see section 14) regarding materials developed under project grants and contracts. That Statement provides that, with respect to some materials, the public interest will best be served by disseminating those materials without copyright. However, with respect to other materials, copyright protection may be desirable during development, or as an incentive to promote the effective dissemination of such materials. These Guidelines set forth the policies and procedures implementing the revised Statement of Policy.

(b) The primary purpose of these Guidelines is to promote the effective dissemination and use of USOE supported materials in a fair and equitable manner to all interested parties -- developers, producers, and users.

(c) The revised Statement of Policy and these Guidelines are applicable only to materials developed under project grants or contracts. They do not apply to materials developed under State-administered formula grant programs.

(d) Although materials developed under Office of Education grants and contracts will not be endorsed by the Office of Education, arrangements for copyright protection must normally be approved by the Commissioner of Education in order to assure that such arrangements are in the public interest. (See section 5 for exceptions.)

(e) The Office of Education will entertain requests for authorization to secure copyright. Although these Guidelines contemplate publication by commercial producers the copyright authorization request should be submitted by the grantee or contractor or by someone designated by the grantee or contractor. If the request is submitted by a producer the procedures for obtaining competition for publication may be arranged by the Office of Education. (See section 11.) The Commissioner of Education may authorize the securing of copyright to protect the integrity of the materials during development or as an incentive to promote the effective dissemination of final materials developed with USOE support. Such authorization will be conditioned upon the copyright being claimed only for a specified limited period of time (herein termed the authorized copyright period), a period of less duration than the statutory copyright term. Copyright authorization will be in the form of an agreement (herein termed the copyright authorization agreement) between the USOE and the grantee or contractor.

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* Effective June 8, 1970

(f) In the event the Commissioner of Education (Commissioner) finds that the grantee or contractor has not complied, or is unwilling or unable to comply, with any of the material terms of the copyright authorization agreement, the USOE shall have the right to publish and disseminate the materials, or to have the materials published and disseminated, either with or without copyright protection, and to take such other action as may be allowable under the copyright authorization agreement or otherwise under law or regulation, provided that the grantee or contractor shall be given notice of any action proposed to be taken by the USOE and afforded an opportunity to be heard.

Section 2 -- Definitions

As used herein:

(a) "Materials" means writings (including reports, scholarly works and curriculum materials), sound recordings, films, pictorial reproductions, drawings, or other graphic representations, computer programs and computer data bases, and works of any other nature developed or specified to be delivered under project grants or contracts financially supported, to any extent, by the USOE.

(b) "Final Materials" are those the development of which has been completed to the extent intended under the grant or contract.

(c) "Experimental Materials" are those which are being tested and evaluated under a grant or contract.

(d) "Thin Market Materials" are those for which a limited market, and consequentially insubstantial publication revenues, is anticipated.

(e) "Development" is the act or process of writing, creating, generating, testing, evaluating, or revising materials, as distinguished from the act or process of publishing and disseminating the final materials.

(f) "Publication" is used herein in the conventional sense, but includes also all acts of preparing final materials, in any media, for dissemination, and the further acts of disseminating those materials, in any mode.

(g) "Dissemination" includes the acts of stocking, selling, delivering, distributing, and installing materials.

(h) "Producer" means any publishing or disseminating organization other than the U.S. Government.

(i) "Cosponsor" is any person, organization, or Government agency which contributed materially to a project for developing educational materials. A grantee or contractor may be a cosponsor.

(j) "Project" is a unit of work looking toward the development of a distinct set of educational materials. A grant or contract may include one or more projects or a single project may encompass one or more grants or contracts.

(k) "Copyright Program Officer" is the official within the USOE having responsibility for the operation of the USOE Copyright Program under these Guidelines.

Section 3 -- Authorization to Secure Copyright Protection

(Sections 3 through 12 concern copyright authorization to facilitate publication of final materials. Section 13 concerns copyright authorization for experimental materials.)

(a) Grantees and contractors are free to exercise their best judgments as to the format and intellectual content of materials being developed under USOE grants and contracts.

(b) Grantees and contractors may publish or have published grant or contract developed materials without copyright, or may seek authorization for publication under copyright, or may elect not to publish.

(c) If the grantee or contractor elects to publish the materials, or to have them published, without copyright, it may do so without the necessity of obtaining approval from the USOE. However, such publication should not be undertaken unless the grantee or contractor believes that educational objectives will be adequately served by that approach. Neither the grantee or contractor, nor any of their employees involved in the development, will publish or have published a copyrighted version within twelve (12) months after the publication date of the uncopyrighted version.

(d) If the grantee or contractor elects to seek authorization for publication under copyright pursuant to the procedures of these Guidelines it should do so at the earliest feasible time, preferably at an early stage in the development cycle.

(e) If the grantee or contractor decides that it is unable or unwilling to publish the materials, or to have them published, it should inform the project officer immediately after such decision is made so that other publication arrangements can be made.

(f) The Commissioner may authorize a grantee or contractor to obtain publication under copyright and to claim the copyright for a specific limited period, generally not to exceed five (5) years, upon a showing that the materials can best be disseminated under copyright. An indication of producer interest in publishing the materials will satisfy the requirement for that showing.

Section 4 -- Requests for Copyright Authorization

(a) Requests for authorization to secure copyright will be addressed to the Commissioner of Education, Attention: Copyright Program Officer, preferably in sufficient time for action before the expiration of the grant or contract.

(b) Each request shall include:

1. An identification, by number, of the grant or contract involved, the name and address of the USOE project officer, a description of the type or class of materials for which request for authorization to secure copyright is being made, and a copy of the materials, if available.

2. The rationale whereby the grantee or contractor concluded that the materials should be disseminated under copyright.

3. A statement on the proposed authorized copyright period and the reasons therefor.

4. A statement setting forth a proposed "Request for Proposals" which the grantee or contractor intends to use should the request for authorization to secure copyright be approved; a list of prospective producers to be solicited; the best available indication of the size and nature of the estimated market for the materials; and criteria that will be used to select the successful producer, including the proposed publication and dissemination timetable, approximate price to be charged, experience and capability in the field, royalties to be paid, and other appropriate factors. (However, see section 6 below for the treatment of "thin market" materials.)

5. A statement of any other factors which the grantee or contractor considers to be pertinent to its request.

Section 5 -- Scholarly and Professional Journals and Periodicals

In the interest of rapid dissemination of educational information no restriction whatever is placed upon the publication of educational articles in scholarly and professional journals, and in other periodicals.

Section 6 -- "Thin Market" Materials

Notwithstanding the requirements of section 4 above, the obligation to obtain competition for publication of "thin market" materials will be satisfied by the following procedure:

(a) The grantee or contractor should write to those producers (a minimum of three) which would most likely be interested in publishing the materials. Each should be informed that others are receiving letters. The letter should ask the terms under which the producer would be willing to publish.

(b) The grantee or contractor will furnish copies of the outgoing letters, and of each response, with the copyright authorization request (see section 4), together with a recommendation for selection and the rationale therefor.

(c) The Commissioner will act upon the request in accordance with the provisions of section 8 below.

(d) The Commissioner reserves the right to specify the use of the section 4 procedure if he determines that the materials do not fall within the "thin market" definition.

Section 7 -- Involvement of Producers in Development

(a) Nothing contained in these Guidelines should be interpreted as precluding the involvement of producers in the development of educational materials, provided their involvement is accomplished on a competitive basis so that one producer is not given an undue advantage over other potentially interested producers.

(b) In order to involve producers in the development of educational materials it is contemplated that the "Request for Proposals" specified in subsection 4(b)4. above will, if desirable, require that the producer perform, in addition to normal publishing and disseminating functions, some additional functions which would normally be identified as development functions. Such functions might include, for example, the printing of experimental materials and their distribution to a specified audience, the design of equipment, the production of films, and similar undertakings.

(c) The advantages seen in involving producers in the development phase are:

1. Attraction of private investment.

2. Utilization of unique facilities and expertise.

3. Guidance in the direction of development toward a viable and saleable product, anticipating unique installation and use problems.

4. Ease of transition from development phase to publication phase.

Section 8 -- Decision of the Commissioner

All requests for authorization to secure copyright will be considered by the Commissioner. The grantee or contractor will be notified of the Commissioner's decision.

(a) Where the request is denied, the grantee or contractor will be advised of the reasons for the denial. In such case, the contractor or grantee may request reconsideration within thirty (30) days after receipt of the Commissioner's decision.

(b) For requests which are approved, an agreement, setting forth the conditions under which the grantee or contractor is authorized to secure publication under copyright, including the conditions set forth in section 9 of these Guidelines, and any other conditions deemed appropriate by the Commissioner, will be sent to the grantee or contractor for signature. The agreement will authorize the grantee or contractor to issue the Request for Proposals to prospective producers, to select a producer, and to prepare a publication and dissemination contract.

(c) After receipt and evaluation of the proposals, the grantee or contractor shall submit the name of the producer selected, and the rationale for selection, to the Office of Education for approval of the selection prior to negotiating final terms of a publication and dissemination contract with the producer selected. The publication and dissemination contract will not be executed until it has been approved by the Commissioner.

(d) A grantee or contractor, which has a dissemination capability in addition to a development capability, may be authorized to disseminate materials it has developed, under copyright, under appropriate conditions, upon a showing that such dissemination would be in the public interest.

Section 9 -- General Conditions

Authorization to publish under copyright shall be subject to such conditions as the Commissioner may deem appropriate, including, but not limited to, the following:

(a) The copyright will normally be in the name of the grantee or contractor.

(b) Neither the grantee or contractor, nor any of their employees, without prior written approval of the Commissioner, shall publish or have published any revision or adaptation of the copyrighted materials during such period of time as the Commissioner shall determine, but not to exceed the authorized copyright period.

(c) In addition to any attribution clause that may be required by reason of the grant or contract, a legend, in the form designated by the Commissioner, will be applied to the copyrighted work which will provide notice of the time limitation imposed by the copyright authorization agreement.

(d) Within six (6) months after publication of the copyrighted material the copyright claim will be registered in the U.S. Copyright Office by the grantee or contractor or by the producer for the grantee or contractor. The application for registration will state the date after which the copyright may no longer be claimed.

(e) With respect to any materials for which the securing of copyright protection is authorized pursuant to these Guidelines, the U.S. Government shall be granted an irrevocable, nonexclusive, and royalty-free license to publish, translate, reproduce, deliver, perform, use and dispose of all such materials for U.S. governmental purposes.

(f) In the event the Commissioner finds that the producer has failed to comply with the terms of his publication and dissemination contract with the grantee or contractor, the Commissioner shall have the right to license others to publish the materials covered by the copyright and to take such other action as may be authorized under the publication and dissemination contract: Provided, That the grantee or contractor and the producer shall be given written notice of any action proposed to be taken by the Commissioner and afforded an opportunity to be heard.

(g) If the materials for which copyright is sought are products of a project which is funded jointly with another organization or other organizations or with another Government agency the Commissioner may negotiate with the other organization(s) or agency the terms and conditions by which publication under copyright will be authorized. The purpose of the negotiation will be to reach an accommodation in the event such organization(s) or agency have copyright policies which differ from the Office of Education policy.

Section 10 -- Royalties

(a) As a basic proposition it is contemplated that each cosponsor of a project, if there is more than one, is entitled to share in any royalties from published materials resulting from that project in proportion to the financial or equivalent contribution to the project by the cosponsor.

(b) The grantee or contractor shall remit royalties from the sale or rental of the copyrighted materials to the Office of Education for transmittal to the U.S. Treasury. However, the Commissioner may authorize the grantee or contractor to retain a portion of the royalty income to defray administrative expenses to the grantee or contractor resulting from its compliance with the procedures of these Guidelines, and as an incentive to induce the grantee or contractor to develop better materials and to obtain more effective dissemination. The sharing will be accomplished in the following manner: (The grantee or contractor may elect to retain an amount of royalty determined from one of the following two alternative approaches.)

1. Fifty percent of the net royalty. (Net royalty is defined as that amount remaining after deducting any share or shares due to a cosponsor or cosponsors, other than the U.S. Government or the grantee or contractor, as contemplated in subsection 10(a) above.)

2. That percentage which corresponds with the financial contribution to the project by the grantee or contractor. (If the grantee

or contractor elects this latter alternative the burden of showing such contribution will be upon the grantee or contractor. However, the Commissioner reserves the right to accept or reject such a showing, and to specify the share, not less than fifty percent of the net royalty, to be retained by the grantee or contractor.)

(c) Profit type contractors are not permitted to share in royalties under the provisions of subsection 10(b) above. However, arrangements may be made to allow such contractors to retain royalties to defray administrative expenses, not otherwise recoupable under the contract, incurred in obtaining publication of materials under copyright in accordance with these Guidelines.

Section 11 -- Publication Arranged by the Office of Education

In the event the grantee or contractor is unwilling or unable to undertake the task of obtaining effective dissemination of the materials in accordance with the requirements of ection 4 or 6 hereof, and does not publish or have published without copyright, and provided the Commissioner determines that publication under copyright will promote more effective dissemination and use, the Office of Education may undertake the task of arranging for such dissemination. In that event all royalties which are generated will be paid by the publisher to the U.S. Office of Education, and the grantee or contractor will not share in such royalties.

Section 12 -- Waiver of Guidelines Requirements

(a) The Commissioner reserves the right to permit a grantee or contractor to secure and claim statutory full term copyright in materials, subject only to the requirement that the U.S. Government be granted a royalty free, nonexclusive and irrevocable license to publish, translate, reproduce, deliver, perform, use and dispose of all such materials, for U.S. Government purposes, in those situations wherein the financial support by organizations other than the U.S. Government is so great, as compared with the contribution of the U.S. Government, that it would be inequitable to require more than the said license.

(b) The Commissioner reserves the right to waive or modify the application of these Guidelines to any other situation where he determines such waiver or modification is in the public interest.

Section 13 -- Copyright Protection During Development

The Office of Education recognizes that there may be occasions where it will be in the public interest to prevent curriculum and other materials from falling into the public domain prematurely while they are being developed, tested, and evaluated. Grantees and contractors may take necessary steps to protect such materials during development, testing, or evaluation, provided that they shall not be copyrighted without the express approval of the Commissioner. The Commissioner may approve requests to secure copyright and to claim copyright for a limited period of time during development, testing, and evaluation, where it can be demonstrated that such protection is necessary for the effective development of the materials. Grantees and contractors may obtain such approval by submitting a written request to the Commissioner of Education, Attention: Copyright Program Officer, setting forth the reasons why copyright is needed.

Section 14 -- Statement of Copyright Policy

It is the policy of the U.S. Office of Education that the results of activities supported by it should be utilized in the manner which will best serve the public interest. This can be accomplished, in some situations, by distribution of materials without copyright. However, it is recognized that copyright protection may be desirable, in other situations, during development or as an incentive to promote effective dissemination of such materials. In the latter situations, arrangements for copyright of such materials, normally for a limited period of time, may be authorized under appropriate conditions upon a showing satisfactory to the Office of Education that such protection will result in more effective development or dissemination of the materials or would otherwise be in the public interest.

GUIDELINES ON AUTHORIZING LIMITED COPYRIGHT PROTECTION FOR MATERIALS DEVELOPED UNDER PROJECT GRANTS AND CONTRACTS*

U.S. Office of Education

The following statement sets forth the Guidelines for authorizing limited copyright protection for materials produced under project grants and contracts from the Office of Education. The statement includes the basic policies and procedures involved. Additional information can be obtained by contacting the Copyright Program Officer, Division of Information Technology and Dissemination, Bureau of Research, U.S. Office of Education, Washington, D.C. 20202.

Section 1 -- Scope

(a) The U.S. Office of Education issued a Statement of Policy on March 1, 1968 (see Annex 1) regarding materials produced under project grants or contracts. It provides that the public interest will, in general, best be served by placing such materials in the public domain. However, in some situations, limited copyright protection may be necessary during development, or as an incentive to promote the effective dissemination of such materials. These Guidelines set forth the policies and procedures implementing the Statement of Policy.

(b) The Statement of Policy and these Guidelines are applicable only to materials produced under project grants or contracts. They do not apply to materials produced under State-administered formula grant programs.

(c) Although materials produced under Office of Education grants and contracts will not be endorsed by the Office of Education, any arrangements for copyright protection must be approved by the Commissioner of Education in order to assure that such arrangements are in the public interest.

(d) The Office of Education will entertain requests from grantees or contractors for exceptions from the public domain policy. Provided a proper showing is made, the Commissioner of Education may permit grantees or contractors to secure copyright for a limited period during development or as an incentive to promote the effective dissemination of materials developed under USOE support.

Section 2 -- Definitions

As used herein:

(a) "Materials" means writings, sound recordings, films, pictorial reproductions, drawings or other graphic representations, computer programs, and works of any other similar nature produced or specified to be delivered under project grants or contracts supported by the Office of Education.

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* Effective June 24, 1968

(b) "Curriculum materials" means those works that are primarily intended to be used in instructional programs, including such works as textbooks, teacher guides, multimedia materials, audio-visual materials designed specifically for use in instructional programs, and other instructional materials.

(c) "Unique scholarly works" means such works as foreign language dictionaries, grammars, handbooks, and other works produced for use by a limited number of scholars in highly specialized fields of study.

(d) "Reports of research and research related findings" means those works which primarily contain results of research, evaluation, surveys or statistical studies or other materials that are of primary interest to research and development specialists.

(e) "Copyright program officer" is the officer within the Office of Education having responsibility for the operation of the copyright program, including the review of requests submitted by grantees or contractors.

(f) "Producer" means any non-Government publishing, producing or distributing organization which can disseminate materials.

Section 3 -- Authorization to Secure Copyright Protection

(a) Office of Education grantees and contractors are free to exercise their best judgment as to the content of the materials developed under grants and contracts and shall have initial responsibility for recommending the best method of disseminating such materials. In most cases, such materials will be adequately disseminated by placing them in the public domain. However, there may be exceptional cases where limited copyright protection is needed as an incentive to promote effective dissemination of such materials. The Office of Education will therefore entertain a request from a grantee or contractor for authorization to secure copyright protection for a limited period of time.

(b) The Commissioner may authorize a grantee or contractor to secure copyright protection for a limited term, generally not to exceed a period of five (5) years, or some reasonably longer period where justified, for curriculum materials, unique scholarly works, and such other works as he may designate, where the following can be shown:

1. The grantee or contractor has assayed the potential of the materials and has determined that they can best be published and disseminated through non-Government channels.

2. The grantee or contractor has offered the materials to an adequate sample of producers under the public domain policy of the Office of Education.

3. The grantee or contractor has been unsuccessful in arranging for the production and dissemination of the materials by such producers without copyright protection.

(c) The Commissioner will not ordinarily authorize grantees or contractors to secure limited copyright protection for reports of research and research-related findings.

(d) To advise the Commissioner on whether limited copyright protection for particular materials will result in more effective dissemination and would otherwise be in the public interest, there has been established an Advisory Committee on Publication of Copyrighted Materials.

Section 4 -- Requests for Authorizations

(a) Requests for authorization to secure copyright will be addressed to the Commissioner of Education, Attention: Copyright Program Office, preferably in sufficient time for action before the expiration of the grant or contract.

(b) Each request shall include:

1. An identification of the grant or contract involved, and a description of the type or class of materials for which request for authorization to secure limited copyright is being made, and a copy of the materials, if available.

2. An assessment of the potential of the materials and the rationale whereby the grantee or contractor concluded that they should be disseminated through non-Government channels.

3. A statement of the action taken by the grantee or contractor to have the materials produced and disseminated by placing them in the public domain, including a list of producers contacted, the solicitation correspondence, and their responses.

4. A statement on the proposed duration of the limited copyright term and the reasons therefor.

5. A statement setting forth a proposed "Request for Proposals" which the grantee or contractor intends to use should the request for approval to secure a copyright be granted; a list of prospective producers to be solicited; an indication of the size and nature of the estimated market for the materials and criteria that will be used to select the successful producer such as the proposed production and dissemination timetable, price to be charged, experience and capability in the field, royalties, etc.

6. A statement of any other factors which the grantee or contractor considers to be pertinent to its request.

7. The request shall be signed by an authorized official of the grantee or contractor.

Section 5 -- Decision of the Commissioner

All requests for authorization to secure copyright will be decided by the Commissioner. The grantee or contractor will be notified of the Commissioner's decision.

(a) Where the request is denied, the grantee or contractor will be advised of the reasons for the denial. In such case, the contractor or grantee may request reconsideration within thirty (30) days after receipt of the Commissioner's decision.

(b) Where the request is approved, the letter of approval will set forth the conditions under which the grantee or contractor is authorized to secure copyright, including the conditions outlined in Section 6 of these Guidelines and any other conditions deemed appropriate by the Commissioner. The letter of approval will authorize the grantee or contractor to issue the Request for Proposals to prospective producers.

(c) After receipt and evaluation of the proposals, the grantee or contractor shall submit the name of the producer he has selected to the Copyright Program Officer for approval prior to execution.

Section 6 -- Conditions

Authorization to secure copyright shall be subject to such conditions as the Commissioner may deem appropriate, including, but not limited to, the following:

(a) The grantee or contractor or any of their employees shall not, without the prior written approval of the Commissioner, produce or arrange for the production of any revision or adaptation of the copyrighted materials during a period of time to be agreed upon between the Office of Education and the grantee or contractor.

(b) The grantee or contractor shall remit the royalties from the sale or rental of the copyrighted materials to the Office of Education for transmittal to the U.S. Treasury.

(c) In addition to any attribution clause that may be required by reason of the grant or contract, the following legend, appropriately indicating the date to be agreed upon, will appear adjacent to each copyright notice:

> "Copyright is claimed until ______________. Thereafter, all portions of this work covered by this copyright will be in the public domain."

(d) With respect to any materials for which the securing of copyright protection is authorized pursuant to these Guidelines, the U.S. Government shall reserve an irrevocable, nonexclusive, royalty-free license to publish, translate, reproduce, deliver, perform, use and dispose of all such materials for Governmental purposes.

(e) In the event the Commissioner finds that the producer has failed to comply with the terms of his contract with the grantee or contractor, the Commissioner shall have the right to license others to produce the materials covered by the copyright and to take such other action as may be authorized under the production contract, provided that the grantee or contractor and the producer shall be given written notice of any action proposed to be taken by the Commissioner and afforded an opportunity to be heard.

Section 7 -- Copyright Protection During Development

The Office of Education recognizes that there may be occasions where it will be in the public interest to prevent curriculum and other materials from falling into the public domain prematurely while they are being developed, tested, and evaluated. Grantees and contractors may take necessary steps to protect such materials during development, testing, or evaluation, provided that they shall not be copyrighted without the express approval of the Commissioner. The Commissioner may approve requests to secure copyright for a limited period during development, testing, and evaluation, where it can be demonstrated that such protection is necessary for the effective development of the materials. Grantees and contractors may obtain such approval by submitting a formal request to the Commissioner of Education, Attention: Copyright Program Officer, setting forth the reasons why copyright is needed. The procedure set forth in Sections 3 through 6 of these Guidelines are not applicable to such requests.

ANNEX I

This Statement of Policy was published in the Federal Register March 1, 1968 (33 F.R. 3653).

It is the policy of the Office of Education that the results of activities supported by it should be utilized in the manner which would best serve the public interest. It is believed that the public interest will, in general, best be served if materials produced under project grants or contracts from the Office of Education are made freely available to the Government, the education community, and to the general public. Ordinarily, this objective will be accomplished by placing such materials in the public domain. In some situations, however, it is recognized that limited copyright protection may be necessary during development or as an incentive to promote the effective dissemination of such materials. At the request of a grantee or contractor, arrangements for copyright of such materials for a limited period of time may be authorized under appropriate conditions upon a showing satisfactory to the Office of Education that such protection will result in more effective development or dissemination of the materials and would otherwise be in the public interest. This policy is effective immediately.

The Statement of Policy, dated July 12, 1965, 30 F.R. 9408, is modified accordingly.